IN THE SUPREME COURT OF THE STATE OF NEVADA

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JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Appellant, v. DOUGLAS MCEACHERN, EDWARD KANE, JUDY CODDING, WILLIAM GOULD, MICHAEL WROTNIAK, and nominal defendant READING INTERNATIONAL, INC., A NEVADA CORPORATION Respondents.	Supreme Court Case No. 75053 Consolidated with Case Nos. 76981, 77648 & 77733 District Court Case No. A-15-719860-B Coordinated with: Case No. P-14-0824-42-E

Appeal (77648 & 76981)
Eighth Judicial District Court, Dept. XI
The Honorable Elizabeth G. Gonzalez

JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981
Volume LIII
JA13059 – JA13232

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CERTIFICATE OF SERVICE

I certify that I am an employee of MORRIS LAW GROUP; I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be e-served via the Supreme Court's electronic service process. I hereby certify that on the 28th day of August, 2019, a true and correct copy of the foregoing **JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981**, was served by the following method(s):

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continues, this response may be supplemented.

DATED this 13th day of November, 2015.

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Docket 75053 Document 2019-36615

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Reading International, Inc.'s Third Supplemental Response to James Cotter, Jr.'s Request for Production of Documents*** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 13th day of November, 2015.

/s/ Megan L. Sheffield
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EXHIBIT B

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RDI0002479	JJC JR.'S Request 1
RDI0002480	JJC JR.'S Request 2
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RDI0004188	JJC JR.'S Request 2
RDI0004191	JJC JR.'S Request 2
RDI0004192	JJC JR.'S Request 2
RDI0004193	JJC JR.'S Request 2
RDI0004197	JJC JR.'S Request 2
RDI0004211	JJC JR.'S Request 1
RDI0004212	JJC JR.'S Request 2
RDI0004219	JJC JR.'S Request 1
RDI0004222	JJC JR.'S Request 1
RDI0004223	JJC JR.'S Request 6
RDI0004224	JJC JR.'S Request 1

ELECTRONICALLY SERVED
6/15/2018 5:00 PM

DDW
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Counsel for Reading International, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive,

Defendants.

Case No. A-15-719860-B
Dept. No. XI

Coordinated with:

Case No. P 14-082942-E
Dept. XI

Case No. A-16-735305-B
Dept. XI

READING INTERNATIONAL, INC.'S THIRTY-SEVENTH SUPPLEMENTAL NRCP 16.1 INITIAL DISCLOSURES

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Reading International, Inc. ("RDI") by and through its attorneys, and pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure, hereby provides its Thirty-Seventh Supplement to its Initial Disclosures. **Supplemental information can be found in bold font.**

These disclosures are based on information reasonably available to RDI as of this date, recognizing that the investigation continues and that discovery has just begun. RDI reserves the right to supplement or modify this supplemental disclosure statement at any time as additional information becomes available during the course of discovery.

In making this disclosure, RDI does not purport to identify every individual, document, data compilation, or tangible thing possibly relevant to this lawsuit. Rather, RDI's disclosure represents a good faith effort to identify discoverable information they currently and reasonably believes may be used to support their claims and defenses as required by NRCP 16.1. Furthermore, RDI makes this disclosure without waiving its right to object to the production of any document, data compilations, or tangible thing disclosed on the basis of any privilege, work product, relevancy, undue burden, or other valid objection. This disclosure does not include information that may be used solely for impeachment purposes. While making this disclosure, RDI reserves, among other rights, (1) its right to object on the grounds of competency, privilege, work product, relevancy and materiality, admissibility, hearsay, or any other proper grounds to the use of any disclosed information, for any purpose in whole or in part in this action or any other action and (2) its right to object on any and all proper grounds, at any time, to any discovery request or motion relating to the subject matter of this disclosure.

The following disclosures are made subject to the above objections and qualifications.

INITIAL DISCLOSURES

A.

LIST OF WITNESSES PROVIDED BY RDI

Based on the information currently available to RDI, the following individuals are identified:

///

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48. Roberto Moldes
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B.

LIST OF DOCUMENTS PROVIDED BY DEFENDANTS

Based on the information reasonably available, the following categories of documents are in RDI's possession, custody or control and may be used by RDI to support their claims or defenses. The following documents will be sent via secure file transfer:

Beg. Bates#	Description
RDI0000001-RDI0000095	RDI's first set of data responsive to expedited discovery requests
RDI0000096-RDI0002467	RDI's second set of data responsive to expedited discovery requests
RDI0002468-RDI0004224	RDI's third set of data responsive to expedited discovery requests
RDI0004225-RDI0011216	RDI's Fourth Supplemental Production
RDI0011217-RDI0016091	RDI's Fifth Supplemental Production
	RDI's Privilege Log of Emails, attached hereto as Exhibit 1
	RDI's Privilege Log of Documents and Loose Files, attached hereto as Exhibit 2
	List of Counsel Identified on Privilege Log, attached hereto as Exhibit 3
RDI0016092-RDI0018198	RDI's Sixth Supplemental Production

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	RDI's Supplemental Privilege Log of Craig Tompkins data[1]
	RDI's Redaction Log attached hereto as Exhibit 4
RDI0018199-RDI0022814	RDI's Seventh Supplemental Production
	RDI's Supplemental Privilege Log of Emails, attached hereto as Exhibit 5
	RDI's Supplemental Privilege Log of Documents and Loose Files, attached hereto as Exhibit 6
RDI0022815-RDI0025532	RDI's Eighth Supplemental Production
RDI0025533-RDI0029186	RDI's Ninth Supplemental Production
	RDI's Supplemental Privilege Log of emails and documents, attached hereto as Exhibit 7[2]
RDI0029187-RDI0035423	RDI's Tenth Supplemental Production
RDI0035424-RDI0037096	RDI's Eleventh Supplemental Production
RDI0037097-RDI0043136	RDI's Twelfth Supplemental Production
RDI00430137-RDI0046281	RDI's Thirteenth Supplemental Production
	RDI's Supplemental Privilege Log of emails and documents, attached hereto as Exhibit 8[3]
RDI0046282-RDI0050667	RDI's Fourteenth Supplemental Production
RDI0050668-RDI0054887	RDI's Fifteenth Supplemental Production
RDI0054888-RDI0055808	RDI's Sixteen Supplemental Production

[1] Please be advised that this log contains emails sent to or from Craig Tompkins that did not include any non-retained attorneys or other third-party recipients. This log was created after running the agreed upon search terms on data collected from Mr. Tompkins and using a predicative coding model. Due to the volume of data collected from Mr. Tompkins, a manual review of all emails was not completed and as such this log may include documents not relevant to this litigation, but this data was captured by the predicative coding model which assigned these materials a response score of 70 or higher. All attachments to any privileged communications are included on this log. Due to volume, this document will not be served via Wiznet and will be sent via FTP.

[2] Due to volume, this document will not be served via Wiznet and will be sent via FTP.

[3] Due to volume, this document will not be served via Wiznet and will be sent via FTP.

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	RDI's Supplemental Privilege Log of emails and documents, attached hereto as Exhibit 9[4]
RDI0055809-RDI0058011	RDI's Seventeenth Supplemental Production
RDI0058012-RDI0058299	RDI's Eighteenth Supplemental Production
RDI0058300-RDI0059676	RDI's Nineteenth Supplemental Production
RDI0059677-RDI0059743	RDI's Twentieth Supplemental Production
RDI0059744-RDI0060025	RDI's Twenty-First Supplemental Production
RDI0060026-RDI0060048	RDI's Twenty-Second Supplemental Production
	RDI's Supplemental Privilege Log of Documents and Loose Files, attached hereto as Exhibit 10
RDI0060049-RDI0060071	RDI's Twenty-Third Supplemental Production
RDI0060072-RDI0063688	RDI's Twenty-Fourth Supplemental Production
RDI0063689-RDI0063803	RDI's Twenty-Fifth Supplemental Production
RDI0063804-RDI0063918	RDI's Twenty-Sixth Supplemental Production
	RDI's Privilege Log of Documents relating to James Cotter Jr,'s Requests for Production dated January 12, 2018
RDI0063919-RDI0063920	RDI's Twenty-Seventh Supplemental Production
RDI0063921-RDI0064969	RDI's Twenty-Eight Supplemental Production
	RDI's Privilege Log of Documents relating to Collection of Materials Ordered at May 2, 2018 Hearing
RDI0064970-RDI0065120	RDI's Twenty-Ninth Supplemental Production
	RDI's Supplemental Privilege Log of Documents relating to Collection of Materials Ordered at May 2, 2018 Hearing
RDI0065121-RDI67406	RDI's Thirtieth Production
RDI0067407-RDI0070364	RDI's Thirty-First Production

[4] Due to volume, this document will not be served via Wiznet and will be sent via FTP.

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RDI0070365-RDI0071543	RDI's Thirty-Second Production
	RDI's Amended Privilege Log of Documents relating to Collection of Materials Ordered at May 2, 2018 Hearing (Amends logs produced on 5/30/2018 & 5/31/2018)
RDI0071544-RDI0071599	**RDI's Thirty-Third Production (also includes replacement image for RDI0070450)**
	RDI's Second Amended Privilege Log of Documents relating to Collection of Materials Ordered at May 2, 2018 Hearing (Log is amended to reflect bates numbers of documents produced with RDI's 33rd Production; all amended items are highlighted in yellow)
	RDI'S Amended Privilege Log relating to James Cotter Jr,'s Requests for Production dated January 12, 2018 (amended log served on 2/22/2018; this log is amended to reflet bates numbers of documents produced with RDI's 33rd Production; all amended items are highlighted in yellow)

RDI reserves its right to submit as an exhibit any document, data compilation or tangible item identified by any other party in this action or obtained from any third party. RDI further reserves its right to amend and/or supplement this first supplemental list of documents, data compilations, or tangible items as discovery proceeds and additional documents are produced by parties and third parties.

Further, RDI will provide its production materials as described below whenever possible and requests that all parties provide their productions utilizing the same guidelines:

> All electronically stored information ("ESI") shall be produced electronically in a form that maximizes the ability to search the information by the use of search terms and that maximizes the amount of metadata that accompanies the information. Specifically, when available, please provide all ESI as a .DAT file including metadata for the following fields:

Field Name	Email	Attachment	Loose	Description
BegBates	x	x	x	First Bates number of native file document/email
EndBates	x	x	x	Last Bates number of native file document/email
BegAttach	x	x	x	First Bates number of attachment range
EndAttach	x	x	x	Last Bates number of attachment range
PgCount	x	x	x	Number of pages in native file document/email
Custodian	x	x	x	Custodian of file

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CustodianAll	x	x	x	Custodian of file, followed by all other Custodians that have a duplicate of the record. This list is de-duped within the Custodian names. This will be a multi-choice field.
FileType	x	x	x	Application Name field value pulled from metadata of the native file.
FileExt	x	x	x	File extension of native file
FileName	x	x	x	Original filename of native file. Contains subject of e-mail for e-mail records
FilePath	x	x	x	Full path to source files (if e-docs or loose e-mail) or folder path contained with a mail store (if NSF or PST)
Subject	x	x	x	Subject field value extracted from metadata of native file; email subject for email, subject field extracted from metadata for loose efiles.
TO	x			Recipient(s) of the e-mail; email and friendly name if available in metadata
FROM	x			Author of the e-mail
CC	x			Recipient(s) of "Carbon Copies" of the e-mail; email and friendly name if available in metadata
BCC	x			Recipient(s) of "Blind Carbon Copies" of the e-mail; email and friendly name if available in metadata
DATESENT	x			Sent date of an e-mail
TIMESENT	x			Time the e-mail was sent
DATERCVD	x			Received date of an e-mail
TIMERCVD	x			Time the e-mail was received
AUTHOR		x	x	Author metadata from the loose efile
DATECREATED		x	x	Creation Date from the properties of the native file. When not available the file system date.
TIMECREATED		x	x	Creation Time of the native file from the properties of the native file. When not available the file system time.
DATELASTMOD		x	x	Last Modified Date from the properties of the native file. When not available the file system date.
TIMELASTMOD		x	x	Last Modified Time from the properties of the native file. When not available the file system time
MD5HASH		x	x	MD5 Hash value of the document.
DOCLINK	x	x	x	Path to Native file in exported data
OCRPATH	x	x	x	Path to Text file corresponding to each document in export

- The .DAT file must use the following Concordance® default delimiters: Comma ASCII character (020) Quote þ ASCII character (254)
- Date fields should be provided in the format: mm/dd/yyyy
- Date and time fields must be two separate fields

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- Text must be produced as separate text files, not as fields within the .DAT file.
- The full path to the text file (OCRPATH) should be included in the .DAT file.
- Native file documents must be named per the BegBates number.
- The full path of the native file must be provided in the .DAT file for the DocLink field.
- Black and white images must be 300 DPI Group IV single-page TIFF files.
- File names cannot contain embedded spaces or special characters (including the comma).
- All TIFF image files must have a unique file name, i.e. Bates number.
- Images must be endorsed with sequential Bates numbers in the lower right corner of each image.
- Excel spreadsheets should have a placeholder image named by the Bates number of the file.
- Production should include an Opticon or IPRO image cross-reference file

C.

DAMAGES

RDI will seek to recover the full extent of their damages to which they are entitled as a result of Plaintiff filing this action, including all costs, expert fees and attorney's fees incurred as a result of this dispute. The total computation of RDI's damages cannot be completed as amounts continue to accrue.

RDI reserves its right to supplement this disclosure as additional information becomes available.

DATED this 15th day of June, 2018.

GREENBERG TRAURIG, LLP

/s/Mark E. Ferrario
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Reading International, Inc.'s Thirty-Seventh NRCP 16.1 Disclosures*** to be e-served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 15th day of June, 2018.

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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EXHIBIT 4

REP168

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
6/12/15	Complaint		
8/14/15	Cotter's First RFP to individual defendants and RDI, seeking 6 categories of documents limited to "documents created or dated on or after January 1, 2014."		**Exhibit 1**
8/17/14	T2 Plaintiff's First RFP seeking 6 categories of documents starting 6/1/2013 to date		**Exhibit 2**
9/10/15	Navigant invoice to RDI: **$6,936.25** "discovery consulting" fees $225 - $350/hr. **$5,000** "collection fees"	Block-billing; No description of "collection" work performed; No identification of "client"; Boilerplate descriptions.	EP 0893-0894
9/17/15	RDI's responses to First RFPs of Plaintiff and T2 Plaintiffs: RDI **imaged RDI's server**		**Exhibit 3**
10/16/15	Navigant invoice to RDI: **$45,098.75** "consulting fees" & **$121,823.24** expenses including:	Excessive hours (>100) for "consulting" at excessive hourly rates ($225-350) akin to hourly attorney rates and above paralegal rates; No breakdown per timer;	EP 0898 – 0913

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
	$90,050 [data in] 1801 GB **$22,760** [data out] 113.80 GB **$2,500** collection 2 mobile devices **$675** Relativity user fees [9]	Pervasive block-billing (3.0 & 3.5) with inadequate descriptions ("client communication and support") by Ashley Smith; Pervasive block-billing by Caroline Miller (3.5; 4.0; 8.0); unnecessary uploading of entire RDI server given limited RFPs; Excessive data processing; Excessive user fees;	
10/16/15	Navigant bill to Quinn Emanuel: **$10,023.75** "consulting fees" **$19,824.60** [data in] 107.16 GB **$375** Relativity user fees [5]	Non-descriptive, repetitive block-billing by Ashley Smith ("client communication (N. Helpern), discovery consulting"); Paralegal-type search work (1.80 "Ran searches"; "Checked on problematic document for client"); Excessive fees for data processing; Excessive number of users	EP 0919 – 0923
10/29/15	RDI 2nd. Supp.: **RDI 96 –2467**		Ex. 3
11/13/15	RDI 3rd Supp.: **RDI 2468 –4224**		Ex. 3
11/13/15	Navigant bill GT: **$38,807.50** "consulting fees" **$525** Relativity user fees [7]	Pervasive block-billing and paralegal work by Amy Tsang (review, analysis, and production of data); All 26.5 hours of Ashley Smith block-billed with similar generic descriptions	EP 0928 – 0940

Date	Description	Reason	Doc Nos
		("Client communication, conference calls. Discovery consulting, case management"); All 47.3 hours of Caroline Miller block-billed up to 6.5 hours doing pervasive and excessive paralegal-type work (esp. given the number of GT users); 17.25 of paralegal work by Stacey Levy (*e.g.*, "review Ellen Cotter's mobile device conversations"); Excessive number of users.	
11/13/15	Navigant bill QE: **$6,005.00** "consulting fees" $225 -350/hr **$10,454.35** [data processing] 56.51 gb **$375.00** user fees [5]	Excessive block-billed paralegal-type work by Miller and Stacey Levy; excessive fees for data processing	EP 0943 – 0947
11/19/15	RDIs 4th Supp.: **RDI 4274 – 11216**		Ex. 3
12/03/15	RDIs 5th Supp.: **RDI 11276 – 16039**		Ex. 3
12/09/15	**T2** 2nd set of RFPs		Ex. 2
12/21/15	Navigant bill RDI: **$16,025.00** consulting **$1,050.00** Relativity user fees **[14 users]**	All 7 hours of Ashley Smith block-billed at $350 per hour with similar generic descriptions ("Client communication. Discovery consulting"); All 23.6 hours of Caroline Miller block-billed doing pervasive and excessive paralegal-type	EP 0955 - 0962

Date	Description	Reason	Doc Nos
		work (productions; prepare searches; production chart work); excessive (14) users.	
12/21/15	Navigant bill QE - **$5,971.25** consulting fees	2.5 hours of Ashley Smith block-billed at $350 per hour with similar generic descriptions ("Client communication, production QC"); 9.3 hours of Caroline Miller block-billed and paralegal-type work (run searches; prepare productions; prepare searches)	EP 0965 – 0958
01/12/16	Navigant bill –RDI **$34,350.00** professional fees **$1,125.00** Relativity user fees [15]	Excessive number of hours (116.75) in "consulting" and "project management" fees: 8.5 hours of Ashley Smith block-billed at $350 per hour with *identical* generic descriptions ("Case management: Multiple correspondence with client [who?] regarding project status, next steps, project requests and requirements"); **67.5** hours of Caroline Miller block-billed up to 6.5 hours of paralegal-type work (run searches; prepare productions; prepare searches); and 29.2 hours of Nicole LeBeau with paralegal-type work	EP 0976 – 0991

Date	Description	Reason	Doc Nos
		(searches, determine privileged documents etc.)	
01/12/16	Navigant bill – QE **$7337.50** professional fees	Block-billing; 25H paralegal-type work Nicole Miller	EP 0994 – 0999
01/12/16	Navigant bill – Productions **$3,542.50** professional fees	Paralegal-type work Miller	EP 1002 - 1005
1/13/16	RDI's responses to T2 2nd set of RFP that sought records going back 4 years		Ex. 2
02/19/16	Navigant bill - **$50,786.25** professional fees **$1,125.00** Relativity user fees [15]	Excessive number of hours (179.05) in "consulting" and "project management" fees: 18 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("On-going communication with client, discovery consulting. . . .") ; **95.15** hours of Caroline Miller block-billed up to 7 hours with paralegal-type work (run searches; prepare productions; prepare searches and batches); and **51.6** hours of Nicole LeBeau with paralegal-type work (searches, determine privileged documents etc.)	EP 1008 – 1025
02/19/16	Navigant bill – QE **$4087.50** professional fees	Block-billing for paralegal work Miller (production searches)	EP 1029 - 1031

Date	Description	Reason	Doc Nos
02/24/16	RDI's 1st Supp. response to T2 RFPs: **RDI 22815 – 22823**		Ex. 2
02/24/16	Navigant bill – **$4,937.50** professional fees	11.5 of block-billed hours Miller; paralegal-type work (1.6 "prepared letters for destruction of clawback. . . .")	EP 1034 – 1037
03/14/16	Navigant bill GT - **$21,356.75** professional fees **$2,777.50** [data in] 55.55 gb **$5,326.00** [data out] 26.63 gb **$675.00** Relativity user fees [9]	Excessive project management hours (79.53 and consulting; 7.5 hours of Ashley Smith block-billed at $350 per hour with generic descriptions ("Case management . . . ."); 51.5 hours of Caroline Miller block-billed up to 6 hours of paralegal-type work (run searches; prepare productions; prepare searches); and 9.8 hours of Nicole LeBeau with paralegal-type work (review search terms, identify documents for redaction); excessive number of users	EP 1040 – 1049
03/14/16	Navigant bill – QE **$17,180.00** professional fees **$675** Relativity user fees [9]	Excessive block-billing and paralegal work (run searches; discuss search terms; at excessive rates; billing 1.5 hours "wait[ing] for Ellen Cotter to arrive"; 6. H travel to directors' houses for data collection	EP 1052 – 1061
03/14/16	Navigant bill – **$3,767.50** professional fees	Block-billing	EP 1064 – 1067

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
03/15/16	Navigant bill – SHEPPARD MULLIN **$840.18**	Unrelated	EP 1070 – 1072
03/18/16	T2s 2nd RFP to RDI		Ex. 2
03/23/16	RDIs 2n Supp. T2 RFP		Ex. 2
04/26/16	Navigant bill – GT **$26,036.25** professional fees **$3,080.50** [data in] 61.61 gb **$675** Relativity user fees [9]	Excessive number of hours (115.85) in "consulting" and "project management" fees: 15 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("Case management, continuing discussion. . . ."); excessive 72.40 hours of Caroline Miller block-billed up to 5.8 hours of paralegal-type work and inadequate descriptions; and 10.2 hours of Nicole LeBeau with paralegal-type work (searches, determine privileged documents etc.)	EP 1075 - 1089
04/26/16	Navigant bill – QE **$8,207.50** professional fees **$675** Relativity user fees [9]	Excessive, needless consulting hours, block-billing	EP 1092 – 1100
04/26/16	Navigant bill – **$2,847.50** professional fees	Excessive consulting, block-billing	EP 1103 – 1106
5/18/16	Navigant bill – QE **$12,591.25** professional fees	54.85 hours of excessive project management all block-billed; 6 hours of work related to unknown "Sacks firm"	EP 1129 - 1140

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
5/18/16	Navigant bill – Productions **$4,195.00**	10 hours of excessive project management all block-billed	EP 1143 – 1146
5/20/16	Navigant bill – GT **$23,473.75** professional fees **$450.00** Relativity user fees [6]	Excessive (>100 hours) consulting and project management work block-billed; inadequately described (Smith & Miller)	EP 1109 – 1126
6/20/16	RDIs 3rd Supp. response to T2s 2nd RFPs		Ex. 2
6/20/16	RDI's 6th Supp. Resp. to Cotter's RFPs		Ex. 1
6/20/16	RDI's 6th Supp. response to T2s RFPs		Ex. 2
06/21/16	RDI's 1st Supp. Resp. to Cotter's 2nd RFPs: RDI **37197 – 54528**		Ex. 1
6/21/16	RDI's 1st Supp. Resp. to T2s 3rd RFPs		Ex. 2
6/24/16	Cotter's 2nd RFPs to RDI		
6/29/16	Navigant bill – RDI **$14,355.00** professional fees	Excessive number of hours in "consulting" and "project management" fees block-billed at excessive rates	EP 1149 – 1159
6/29/16	Navigant bill – QE **$5,602.50** project management fees **$375.00** Relativity user fees [5]	Excessive number of hours in "project management" fees block-billed at excessive rates	EP 1162 – 1167

Date	Description	Reason	Doc Nos
6/29/16	Navigant bill – **$3,397.50** professional fees **$375.00** Relativity user fees [5]	Excessive number of hours in "project management" fees block-billed at excessive rates	EP 1170 – 1174
6/29/16	Navigant bill – COTTER TRUST **$2,532.50**	Unrelated	EP 1177
7/12/16	**Motion for T2 settlement**		
7/21/16	Navigant bill –RDI **$14,907.50** professional fees **$300.00** Relativity user fees [4]	Excessive number of hours (45.4) in "consulting" and "project management" fees: 26.5 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("Ongoing client communication [with who?] RE project requests around depo prep"; excessive 16 hours of Caroline Miller block-billed	EP 1182 – 1188
	Other invoices		EP 1189- EP 1217
	TOTAL billing by 7/21/16: $635,722.20		
1/6/17	Navigant bill – RDI **$7952.50** professional fees **$5227.85** expenses [Nov-Dec hosting fees]	Excessive hours in "case" management and "project" management (29.7), numerous entries "Ongoing communication with client regarding additional production data	EP 1287- 1291

Date	Description	Reason	Doc Nos
		to export and load (10.5 hrs); production and export (17.3)	
1/6/2017	Navigant bill – QE **$6,660.00** professional fees **$3,890.87** expenses [Nov/Dec hosting fees)	Excessive hours in "project" management (29.60 hrs): production and export	EP 1293 – 1297
2/27/17	Navigant bill – QE **$5,557.50** professional fees **$2001.33** expenses	Excessive "project" management (24.7 hrs) – transition to other team members; productions (2 gb produced)	EP 1321 – 1325
12/20/17	Navigant bill – QE **$4,998.10** professional fees **$1,726.70** expenses	Excessive fees (25.6 hrs) – multiple searches for counsel for depositions	EP1426 – 1428
4/26/18	Navigant bill – QE **$5,883.75** professional fees **$2168.97** expenses	Excessive fees (26.15 hrs) – prepared clawback docs for redaction; document load for RDI; prepare productions (1 gb)	EP 1491 – 1493
6/25/18	Navigant bill – GT **$14,770.00** professional fees **$9,769.04** expenses	Excessive fees (62.20 hrs) for 103.1 gb in, 8.81 gb out re directors' data	EP 1508 - 1512
6/25/18	Navigant bill – QE **$24,980.00** professional fees **$3,231.42** expenses **$3,066.012** travel expenses	Excessive fees (78.8 hrs) collecting directors' data, processing; 9.65 gb in; unreasonable to travel to the data as opposed to send the data on hard drive	EP 1515 – 1520
8/20/18	Navigant bill – GT **$6,707.50** professional fees **$3,632.47** expenses	Excessive fees (29.7 hrs) 6/1 – 6/15/ 18; resubmissions for production, coding choices.	EP 1526 – 1527

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
8/16 – 7/20/18	Navigant bills remainder of case: **$249,154.18**		EP 1218 - 1533
6/15/18	RDI's 37th supplemental disclosures: total produced RDI **71544 – 71599**		Ex. 3; *see also* Ex. 4 to Motion to Retax

EXHIBIT 5

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
Andre Matyczynski			
06/2015	**$7,880.24** for Tim Storey airfare to NZ after board meeting	*No relation to litigation*	EP 1653
08/2015	**$4,060** for SPR reports	*No itemization or explanation*	EP 1665 – 1671
DOUG MCEACHERN			
02/12/2016	**$191.31** for breakfast w/EC, M. Ferrario, parking, mileage for Storey deposition	*Unnecessary to attend*	EP 1684
05/16/2016	**$96.00** train and taxi to Jim Cotter's depo	*Unnecessary to attend*	EP 1687
ELLEN COTTER			
07/2015	**$1,195.25** for Mandarin Hotel and other travel costs for "court" 7/10/2015 – 7/11/2015	*No hearing in this case until August 2015.*	EP 1712 – 1714
09/2015	**$1,348.26** for Mandarin Hotel and other travel costs for court 9/17/2015– 9/18/2015	*No court hearing on those dates*	EP 1730, 1733
05/2016	**$341.17** for Uber and meals for Margaret Cotter (MC) and EC depositions	*Excessive*	EP 1744 – 1746
07/2016	**$795.02** for travel costs for 7/28/2016 hearing on motion to approve T2 settlement in LV, incl. airfare and $241.16 dinner with Craig Tompkins ("CT")	*Unrelated to Plaintiff's case & excessive*	EP 1762, 1766

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
08/2016	**$883.61** for 7/28/2016 [T2 settlement] hearing (incl. Mandarin Hotel $497.53, Mandarin Hotel limo airport to hotel $85.00, Sweet Limousine LAX to EC home $97.75, Sweet Limousine LV trip $116.25)	*Unrelated to Plaintiff's case & excessive*	EP 1780 – 1781, 1790
10/2016	**$2,094.83** (incl. 9/29/16 stay at Mandarin, airfare, Oct. 1 meal for "litig. Meeting" with GT, Akin Gump (AG), and QE ($970.13) **$995.54** for 10/6/2016 court hearing [T2 settlement] (including for airfare, Sweet Limousine [2 charges for $222.50] Mandarin Hotel room, and $91.71 meal-	*Unrelated to case; AG was employment counsel in arbitration; excessive* *Unrelated to P's case; excessive*	EP 1798 – 1800
12/2017	**$14,500.37** including: Four Seasons director rooms at $3,183.72; Copier $3,825.00; Brook Furniture $2,505; Office space rental $4,066.65; and airfare $587.96	*Excessive and unnecessary costs due to choice of out of state counsel*	EP 1838 – 1841
01/2018	**$9,761.64** including: -12/29/2017: three limos, **$750** for transportation from Four Seasons to court -first class airfare for Mr. & Mrs. Gould from LA: **$1,760.40,**	*Excessive, extravagant local and long-distance transportation & travel costs for spouses*	EP 1894 – 1899

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
	-airfare for Mr. &Mrs. Kane from San Diego **$320.40,** -1/9-1/11/2018: three limos court to hotel **$750;** -two limos for Goulds to/from airport: **$500; ---** -1/7/2018: **4** limos: **$1,000** hotel/airport. - -computer rental QE: **380.82,** -1/8/2018 directors limos hotel/court: **$500,** -1/9/2018 limo airport/hotel McEachern & Adams: **$500** -1/10/2018 Sweet Limo EMC LV to home **$918.75** -1/13/2018 EC, MC meals **$322.22** -1/15/2018 Sweet Limo EMC LV to home **$787.50** -1/24/2018 Cox Comm IT/data QE: **$507.82**		
01/2018	**$420.40** Upgrade for airfare Mr. & Mrs Kane LV to SD	*Unnecessary / unreasonable spouse*	EP 1913 - 1914
02/2018	**$1,008.67** for LV office space	*Unnecessary expense due to choice of out of town counsel and availability of local counsel firm space*	EP 1919 – 1920, 1931 - 1932
05/2018	**$572.06** for 5/2/2018 hearing (including airfare $334.40 and Sweet Limo LAX to EC home $116.25)	*Unnecessary*	EP 1943 - 1944
LAURA BATISTA			

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
1/3 – 1/10/2018	**$880.70** Meals and mileage LA/LV/LA	*Unnecessary company expense*	EP 1953 – 1954
	MARGARET COTTER		
08/2015	**$2,418.36** for 8/12/2015 hearing [T2 motion to intervene] (incl. Mandarin Hotel, meals, taxis ($877.26) and Airfare LAX to NYC $1,541.10)	*Unrelated to Plaintiff's case; excessive unnecessary and unreasonable*	EP 1971 – 1972
12/2017	12/16/2017 airfare JFK to LAS **$1,038.98** 01/05/2018 airfare JFK LAS **$2,698.30** 1/9/2018 airfare LAS JFK **$2,228.30** 1/26/2018 taxi **$13.30** [not in LV]	*Excessively high, duplicate travel costs*	EP 1978 - 1980
	VICTOR ALBIZURES JR		
01/2018	**$451.72** incl. 1/10/2018 mileage $304.11 1/10/2018 meals $147.61	*No need shown*	EP 1993 – 1994
01/2018	**$623.52** incl. 1/3/2018 mileage $411.60 to LV and Cal Oaks 1/4/2017 lunch w/Laura $90	*No need shown; unnecessary travel to California; excessive meal cost*	EP 2000 – 2001
	WILLIAM ELLIS		
05/2015	**$359.21** for dinner and drinks with T Storey & lunch with Ghose	*Case not filed until 6/2015; no depositions held*	EP 2010 – 2011
07/2015	**$3,250** arbitration fee for Cotter	*Unrelated to this case; pertains to employment arbitration*	EP 2014 – 2015

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
CRAIG TOMPKINS			
2015	**$675.35** – all **flight changes** for trips to LV in July, August, October	*Unnecessary; unreasonable; no court hearings in July*	EP 2024 - 2025
07/2015	**$1,308.91** including: $792.70 flight Oregon (OR) LV OR $40 travel agent fee $413.34 for Mandarin hotel	*Unnecessary luxury accommodations and travel; unrelated travel: there were no court proceedings in this litigation in July 2015*	EP 2028, 2030
08/2015	**$1,288.86** for 8/11/2015 court hearing T2 motion to intervene, including: $790.60 airfare OR LV OR $413.93 Mandarin hotel	*Unrelated to this case; unnecessary & excessive luxury accommodations*	EP 2034 - 2035
09/2015	**$3,052.91** for a 9/10/2015 hearing re motion to dismiss, expedite discovery, including: **$1,774.09** airfare OR LV OR **$73.82** Mandarin hotel 9/1 **$200.00** 9/2 dinner with Susan O'Malley [?] **$149.38** taxis 9/2 in LV **$150.40** Mirage hotel **$657.02** Mirage hotel 9/11 – 12/2015 **$48.74** taxis LV 9/11 – 12	*Unnecessary and unreasonable luxury accommodations, meals, and first-class travel*	EP 2054 – 2055
10/2015	**$2,097.60** for 10/29/2015 Rule 16 conference, including costs for:	*Unnecessary; unreasonable luxury accommodations,*	EP 2065 - 2066

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
	$532 airfare OR LV OR 10/6 - 7 **$312.48** Mirage hotel 10/6 **$431.96** airfare 10/28 **$580.60** Mirage hotel 10/28 – 10/29 **$117.52** taxis 10/28 – 10/30	*needless travel to non-substantive hearing*	
11/2015	**$1,468.96** for 10/29/2015 Rule 16 conference trip, including additional costs for: **$580.60** Mirage hotel 10/30 – 11/1 trip to LV and Indio **$187.06** taxis **$556** In Ace transportation LV to Indio (?)	*Unnecessary; unreasonable luxury accommodations, needless travel to non-substantive hearing; unrelated travel*	EP 2078 - 2079
12/2015	**$224.20** for 1/8/2016 trip to LV [illegible backup] – no hearing		EP 2087 - 2088
01/2016	**$1,797.28** for 1/19/2016 hearing RDI motion to dismiss, including: **$939.00** airfare OR LV OR **$398.21** Mirage hotel **$123.99** meals at Mirage **$200** airfare 1/28 [no hearing]	*Unnecessary; unreasonable luxury accommodations, meals, needless travel; unrelated travel*	EP 2091 – 2092
05/2016	**$1,921.13** for 5/26/2016 hearing T2 motion for preliminary injunction, including: **$1,179.78** airfare OR LV OR **$528.39** Mirage hotel **$155.66** meals	*Unnecessary; unreasonable luxury accommodations, meals, first-class, needless travel; unrelated to Plaintiff's case.*	EP 2100 – 2101

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
06/2016	**$2,193.08** for 6/21/2016 hearing motion to disqualify T2 plaintiffs, including: **$804.20** airfare 6/11 -12 [no hearing] **$222.88** Caesars Palace 6/11 – 12 **$206.24** Caesars Palace 6/21 – 6/22 **$132.31** dinner at Nobu 6/22	*Unnecessary; unreasonable luxury accommodations, meals, travel; unrelated to Plaintiff's case.*	EP 2109 – 2110
07/2016	**$1,318.94** for 7/28/2016 hearing motion to approve T2 settlement, including: **$1,006.40** airfare OR LV OR **$292.74** Mandarin hotel	*Unnecessary; unreasonable luxury accommodations, meals, first-class travel; unrelated to Plaintiff's case.*	EP 2118 – 2119
08/2016	**$1,514.03** including: **$312.48** Mandarin hotel 7/28 **$1,098.80** 8/1 airfare OR LAX OR [not LV travel]	*No need shown; travel unrelated to court hearing; apparent business expense; excessive first-class travel and hotel costs*	EP 2123 - 2124
10/2016	**$3,582.87** for 10/6/2016 hearing T2 settlement Including: **$1,854.80** airfare OR LV OR **$402.32** Mandarin hotel 10/27/2016 hearing MPSJ: **$480.10** airfare OR LV OR **$278.68** Mandarin hotel	*Unrelated to Plaintiff's case; excessive first-class travel and hotel costs* *Excessive hotel costs.*	EP 2131 – 2132
11/2016	**$359.41** Mandarin hotel 10/29	*Excessive hotel costs*	EP 2138 – 2139

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
05/2017	**$67.19** Uber fees 5/19 – 20 to Venetian	*Unrelated; no LV hearing*	EP 2144 – 2145
09/2017	**$1,562.74** for 9/28/2016 hearing motion to compel communications re advice of counsel Including: **$790.60** airfare **$687.85** Caesar's Palace	*Unnecessary; excessive & unreasonable luxury hotel accommodations, first-class travel*	EP 2149 – 2150
11/2017	**$1,252.71** for 11/20/2017 hearing motion for evidentiary hearing adequacy of derivative plaintiff, including: **$722.40** airfare **$180.27** Caesars Palace **$122.84** dinner Nobu **$107.74** meals	*Unnecessary; excessive & unreasonable hotel and meal costs, first-class travel*	EP 2157 – 2160, 2166 – 2167, 2171 – 2172
12/2017	**$4,046.25** for 12/11/2017 hearing pre-trial motions including: **$495.80** airfare OR LV OR **$245.90** Caesars Palace AND **$3,143.00** deposit for residence 1/5–2/5/2018	*Unnecessary; excessive lodging costs for trial; no proof costs incurred/non-refundable*	EP 2175 – 2176
01/2018	**$1,109.89** for trial including: **$409.91** Caesars Palace meal 1/11 **$318.25** car mileage Playa Vista to LV, 1/4 & 1/14	*-Excessive meal costs; no need shown for travel*	EP 2185 – 2186, 2192 – 2193
05/2018	Costs for 5/2/2018 evidentiary hearing: **$409.69** airfare	*No need shown.*	EP 2196 – 2198

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James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** **Hearing Date: October 22, 2018** **Hearing Time: 9:00 a.m.**

Case Number: A-15-719860-B

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I. INTRODUCTION

Nominal defendant RDI filed a Motion for Judgment in its Favor because RDI just realized, in an "oops" moment, that is not a "prevailing party" and may not be entitled to a single dollar of the **$1.2 million** it recklessly spent to help the Cotter sisters prevail on claims that were not made against RDI but made on its behalf.

RDI's Motion is a legal nonstarter. The reason why nominal defendant RDI has "not yet received" and could not receive "judgment in its favor" is because Plaintiff did not make any claims against RDI. He made claims against directors, including his sisters for whom Greenberg Traurig (GT) piled up enormous costs and fees to defend. The Court cannot "fix" and rewrite history by ruling RDI can recoup its outrageous costs. Even assuming the Court could transform RDI from a nominal to an adverse party, the Court has already entered a final judgment in this case, which is now on appeal, and the Court no longer has jurisdiction to grant the "relief" RDI seeks. For these reasons and those set out below, the Court should deny RDI's opportunistic, procedurally-barred Motion in its entirety.

II. ARGUMENT

A. RDI is not entitled to judgment in its favor because Plaintiff's claims were made on its behalf and not against it.

1. RDI was a nominal defendant.

In a derivative case, the corporation must be named as a nominal defendant, but it is actually the "real party in interest" *on whose behalf* the derivative case is brought. *Ross v. Bernhard*, 396 U.S. 531, 538–39 (1970); *Patrick v. Alacer Corp.*, 167 Cal. App. 4th 995, 1005-09, 84 Cal.Rptr.3d 642, 652 (2008). Unless the lawsuit poses a threat to the corporation, a nominal defendant must " 'take and maintain a wholly neutral position taking sides neither with the complainant nor with the defending director.' " *Swenson v. Thibaut*, 250 S.E. 2d 279, 293-94 (N.C. App. 1978) (quoting *Solimine v.*

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Hollander, 129 N.J.Eq. 264, 19 A.2d 344 (1941)). The director defendants, especially those in "control" of the corporation, have no right to use the corporation for the purpose of "step[ing] in and, by answer, attempt to defeat what is practically its own suit and causes of action," nor do they have the right to "impose on the corporation the burden of fighting their battle." *Patrick,* 167 Cal. App. 4th at 1008 (internal quotation marks and citation omitted).

Here, Plaintiff filed a derivative lawsuit naming RDI only as a nominal defendant. All of Plaintiff's three complaints specifically distinguish between the individual director defendants—named "Defendants"—and RDI—named "Nominal Defendant" in the caption. *See,* June 12, 2015 Complaint, on file at 1 (Caption); Oct. 22, 2015 Am. Compl. ("FAC"), on file, at 1 (Caption); Sept. 2, 2016 Second Am. Compl ("SAC") on file, at 1 (Caption). Nowhere in *any* of the three complaints are "Defendants" defined to include RDI.

2. Plaintiff did not make claims against RDI.

None of Plaintiff's four causes of action was made against RDI. Rather, the claims were made against two or more of the individual "Defendants." *See, e.g.*, Compl. at 25 ("For Breach of Fiduciary - against All Defendants"); FAC at 43 ("Breach of Fiduciary Duty - Against MC, EC, Adams, Kane and McEachern"); SAC at 47 ("For Breach of Fiduciary - against All Defendants"); *id.* at 51 ("Aiding and Abetting Breach of Fiduciary Duty - Against MC and EC").

If there were any doubt about what "Defendants" meant, one only needs to look at the allegations following each of the causes of action made against "All Defendants." They all allege a variant of the same thing:

> Each of the **individual defendants**. . . . **was a director** of RDI. As such, each owed fiduciary duties **to** RDI . . . including fiduciary duties of care . . . good faith and loyalty **to** RDI.

SAC ¶ 174 at 48; *id*. ¶181 (to same effect); *id*. ¶188 (to same effect). RDI is not a "director of RDI" and RDI could not possibly breach fiduciary duties to itself. The paragraphs that follow only further confirm that Plaintiff's claims were not made against RDI. *See* ¶¶ 177-178 (alleging that "each of the **individual** defendants . . . breached their respective duties of care and good faith" and that Plaintiff **and the Company** and its other shareholders have suffered injury . . . .") (emphasis added).

Plaintiff did not seek damages or injunctive relief *against* RDI. He sought relief on *behalf* of RDI:

> As a result of the ongoing acts of Defendants, **the Company** [defined as RDI], Plaintiff and other RDI shareholders have suffered and will continue to suffer immediate and ongoing irreparable injury for which no adequate remedy at law exists, including as alleged herein. . . . .
>
> . . . unless such injunctive relief is granted, Plaintiff, **the Company** and other shareholders will suffer irreparable harm for which no adequate remedy at law exists.

E.g., Compl. ¶¶ 133-134; FAC ¶¶ 192-193 (emphasis added)

Plaintiff's SAC could not be clearer, saying in bold, capital letters: "**RDI AND RDI SHAREHOLDERS ARE INJURED.**" SAC at 45; *see also id*. at 53, ¶202 ("unless such injunctive relief is granted, Plaintiff, the Company and other shareholders will suffer irreparable harm"). Plaintiff's Prayer for Relief specifically asked for "**damages** incurred **by** RDI. . . ." *Id*. at 54, ¶ 5 (emphasis added).

RDI is also wrong in contending Plaintiff sought reinstatement from RDI. This is what the *T2 Plaintiffs* sought. *See* August 28, 2015 Verified Shareholder Derivative Compl. at 16 (B.(ii)) (seeking "an order reinstating James J. Cotter, Jr. as the President and CEO of RDI"). The relief Plaintiff Cotter Jr. asked for was an order confirming that the individual directors lacked independence or disinterestedness to vote on his

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termination so that their vote was invalid. SAC at 54, Prayer for Relief ¶3(a)-(e).

3. Plaintiff's request for proper disclosures did not pose a "threat" to the company.

Some courts outside Nevada have recognized a limited exception to the rule that a nominal defendant may generally not defend itself in a derivative suit. These courts have held that nominal defendants may defend themselves against derivative actions that threaten rather than advance the corporate interests, such as actions to: (1) interfere with a corporate reorganization; (2) interfere with internal management in the absence of an allegation of bad faith or fraud; (3) enjoin performance of contracts; or (4) appoint a receiver. *See National Bankers Life Ins. Co. v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) (citing cases); *see also Patrick*, 167 Cal. App. 4th. at 1010 (citing cases without deciding if such exception exists "under California law. . . or . . . not").

RDI cites all five subsections of ¶3 of Plaintiff's Prayer for Relief to argue that Plaintiff sought relief against RDI, but only ¶3(c) of the SAC even addressed RDI. That subsection asked both "RDI *and* the individual defendants to make . . . corrective disclosures . . . in advance of RDI's 2017 ASM . . . ." SAC ¶ 3(c) (emphasis added).[1] As RDI recognizes, this relief was based on conduct by the *individual* defendants, *id.* ¶101, which formed the basis for Plaintiff's third cause of action against the *individual* defendants for breach of fiduciary duty. *See id.* ¶¶ 188-190 (alleging that the directors breached their duties of candor and disclosure by failing to cause RDI to make "timely, accurate and complete disclosures" and by causing RDI to

[1] Plaintiff's Reply to RDI's Opposition to Plaintiff's Motion to Retax Costs mistakenly indicates that this ancillary relief was not sought until September 2016. Reply at 6:23-25. The October 22, 2015 FAC also included a similar ¶ 3(c) in the Prayer for Relief, although the initial complaint did not.

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"disseminate untimely and materially misleading if not inaccurate information . . . .").

Plaintiff's third cause of action did not come close to threatening RDI's existence so as to justify abandoning the "wholly neutral position" RDI was required to take. Other than citing cases, RDI's Motion never explains *how* the relief Plaintiff asked would be a threatening "incursion into its affairs." Motion at 4. Corrective disclosures, if they were warranted, would only further RDI's interests and those of its shareholders. Similarly, RDI does not explain how requiring the directors to have "*bona fide* qualifications" before becoming board members infringes on the corporation's "rights." Motion at 3:11. All that Plaintiff was asking for is compliance with proper principles of corporate governance.

4. RDI through GT voluntarily assumed an adversarial role.

Plaintiff did not treat RDI as anything other than a nominal defendant. Rather, RDI *unilaterally* undertook an adversarial role throughout this case, including by answering the FAC and SAC that were filed on its behalf, and by filing a series of adversarial joinders to the various motions for summary judgment filed by the individual defendants. *See, e.g.*, Oct. 3, 2016 Joinders, on file; March 29, 2016 Answer to FAC and December 20, 2016 Answer to SAC, on file.

The mere fact that RDI was a nominal defendant did not shield it from discovery, nor did requesting documents from it turn the company into an adversary of Plaintiff Cotter. Moreover, Plaintiff's counsel specifically objected to RDI's counsel making arguments in support of RDI's Joinder to the Cotter defendants' Partial MSJ on Independence. *See* Oct. 27 Hearing Tr. at 70:18-24 ("Your honor. . . They're a nominal defendant"). Thus, RDI's attempt to blame Plaintiff for the improper role RDI and its

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hopelessly conflicted counsel played throughout this litigation should be rejected.

B. The Court's August 8, 2018 judgment left nothing to decide.

"[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 996 P. 2d 416, 417 (Nev. 2000). Thus, an order granting summary judgment, which adjudicates the rights and liabilities of all parties and disposes of all issues presented in the case, is *final*. *Id*.

Here, the Court entered its Findings of Fact and Conclusions of Law granting summary judgment in favor of the only three remaining defendants, Ellen Cotter, Margaret Cotter, and Guy Adams ("FFCL"), on August 8, 2018. The Court had earlier granted summary judgment against the five other individual defendants, and had certified that order as final under NRCP 54(b). *See* January 4, 2018 Certification Order, on file. Because RDI was a nominal defendant on whose behalf Plaintiff's claims were brought and Plaintiff's rights and liabilities were decided in the FFCL, there was nothing left for the Court to decide.

1. RDI's counsel agreed that there was "nothing left" to decide.

During the June 19, 2018 hearing—right after the Court granted the director defendants' Motion for Summary Judgment on ratification ("Ratification MSJ")—the Court specifically asked counsel for the parties to go over their pleadings and tell the Court if there were any derivative claims left for her to decide. June 19, 2018 Hearing Tr. at 47:19-48:17. RDI's counsel, Mr. Ferrario, told the Court he did not "think anything else is left." *Id*. at 48:24. When the attorneys for the defendants and RDI came back into the courtroom, Mr. Ferrario told the Court that from his client's perspective

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and the perspective of the attorneys for the directors, there was "nothing left." June 19, 2018 Hearing Tr. at 49:13-15 ("There's nothing left from Mr. Tayback's perspective, my perspective, or the directors of the company. There's nothing left.")

Although RDI proposed to "submit" its Motion to Dismiss Pursuant to NRCP 12(b)(2)—which argued Plaintiff lacked derivative standing to bring his claims for failure to show that demand would have been futile—the Court held that the motion was moot. *Id.* at 49:8 ("It's moot. Unless there's something left, it's moot"). This had nothing to do with the Court "recognizing that resolution of the claims against the Individual Defendants also resolved claims against Reading." Motion at 3:24-26. As explained above, Plaintiff's SAC made **no claims** against RDI. What the Court recognized is that if there were no derivative claims left against the Cotter defendants, there was no basis to determine whether Plaintiff had standing to assert them. Put another way, Plaintiff's standing to bring his derivative claims became a moot issue after the Court granted the Cotter defendants' Ratification MSJ.

C. The Court lacks jurisdiction to grant RDI relief.

The "timely filing of a notice of appeal divests the district court of jurisdiction to act . . . ." *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454–55 (2010) (internal quotation marks and citations omitted). Although the district court retains limited jurisdiction to review motions seeking to alter, vacate, or otherwise change or modify an order or judgment under NRCP 60(b) and to *deny* them, it does not have the jurisdiction to *grant* such a motion. *Foster*, 126 Nev. at 53, 228 P.3d at 455 (citation omitted).

Here, the Court entered its FFCL on August 8, 2018. They were filed on August 14, 2018. *See* FFCL, on file. Written notice of entry of the FFCL was given on August 17, 2018. *See* Notice of Entry of FFCL, on file.

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Plaintiff timely appealed from the FFCL to the Nevada Supreme Court on September 13, 2018. *See* Notice of Appeal, on file. Plaintiff earlier appealed from the Court's January 4 Order certifying as final the December 28, 2017 Order dismissing the five other individual defendants. Therefore, the Court lacks jurisdiction to grant RDI's motion.

It is too late for RDI to now argue, as it does, that the Court's order dismissing the five defendants is *not* final. Motion at 4:4-7. RDI argued the exact opposite four months ago, when it said:

> The Court's written order was issued December 28, 2017, and at the request of Plaintiff, was subsequently certified as a final judgment pursuant to NRCP 54(b). Plaintiff subsequently filed a Notice of Appeal as to that judgment. Accordingly, *this Court no longer has jurisdiction to alter or amend that judgment*.

Motion to Dismiss Pursuant to NRCP 12(b)(2) at 8:24-27 (emphasis added).

D. The Court should deny the Motion, because there are no grounds under Rule 60 to grant it.

If the Court were inclined to grant RDI relief, then the Court could "certify its intent to grant the requested relief . . . ." *Foster*, 228 P.3d at 455. But here, there is no basis to do so.

1. There was no clerical mistake.

Under Rule 60(a), a court may correct clerical mistakes in judgments, order, or other parts of the record. Nev. R. Civ. P. 60(a). As the Nevada Supreme Court has held:

> [A] clerical error is a mistake in writing or copying. As more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, or judge, or printer *which is not the result of the exercise of a judicial function*. In other words, a clerical error is one which *cannot reasonably be attributed to the exercise of judicial consideration or discretion*.

Channel 13 of Las Vegas, Inc. v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978) (quoting *Marble v. Wright*, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961)); *see also Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 426-27, 836

P.2d 42, 45 (1992) (holding same and holding that the amended judgment was void because it involved a substantive change from the prior judgment).

RDI does not point to any fact showing that the clerk, its counsel, this Court, or a printer made a clerical mistake in writing or in copying the FFCL. Therefore, there is no basis for relief under Rule 60(a).

2. Omitting RDI from the FFCL was not an oversight.

Under NRCP 60(b)(1), a party seeking for relief from a final judgment on grounds of "mistake, inadvertence, surprise, or excusable neglect" has the burden of proving his position "by a preponderance of the evidence." *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971) (internal quotation marks and citation omitted). The Court must also consider several factors before granting relief, including whether the moving party: (1) promptly sought relief; (2) lacked knowledge of the procedural requirements; and (3) acted in good faith. *Yochum v. Davis*, 98 Nev. 484, 486–87, 653 P.2d 1215, 1216-17 (1982) (citations omitted).

RDI cites Rule 60(b)(1) without discussion of the Rule's requirements or the application of them to the facts of this case. Motion at 5:4. Thus, RDI has utterly failed meet its burden of proof to obtain relief under Rule 60(b)(1). *Britz*, 87 Nev. at 446, 488 P.2d at 915 (holding that the appellants had "failed to carry their burden of showing mistake, inadvertence, surprise, or excusable neglect, either singly or in combination").

None of the applicable *Yochum* factors weigh in its favor in any event. Omitting RDI from the FFCL was not an oversight or mistake. RDI's counsel was intimately involved in drafting the FFCL. RDI is well aware that no claims were brought against it and that there was no basis to grant judgment in its favor. RDI's counsel is also well aware of the procedural rules of the Court; it only sought relief *after* realizing the impact of not being

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a prevailing party that would support recovery of costs. Thus, RDI's Motion cannot be considered as having been filed in good faith.

3. The Motion seeks a judgment that the Court does not have the authority to award.

Rule 60(b) does not permit a court to grant affirmative relief in *addition* to the relief contained in the prior order or judgment. *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007). In *Delay*, the appellants asked the district court to give them "a new judgment on a takings theory against a separate defendant"—the United States—"that was not bound by the prior judgment" *Id.* at 1047. The appellants sought to: (1) "revisit the circumstances that enabled the United States to be dismissed from the action under the controlling law of the time, [2] reinsert the United States as the real party-in-interest under a retrospective application of Lebron-Brentwood Academy, and [3] gain a judgment against the United States on a new takings claim to effect that Delay had a property interest in his cause of action against the United States that was destroyed upon termination of the Commission." *Id.* at 1046. The district court denied the Rule 60(b) motion, and the Ninth Circuit affirmed its ruling, because the federal rule, like Nevada's counterpart, only allows a party to set aside a judgment—not to substitute it for a new one granting additional relief. *Id.*

Here, RDI is asking the Court for similar affirmative relief after the fact that the Court cannot grant for reasons that go beyond Rule 60(b). RDI's request for judgment requires the Court to disregard its nominal defendant status and transform RDI into a "Defendant" by presuming Plaintiff made claims against RDI when in fact he did not. RDI also asks the Court to presume that RDI could breach fiduciary duties against itself *and* to presume that RDI prevailed on phantom claims not made against it. RDI did not even join in the Ratification MSJ. Even assuming it had joined, the

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ratification resolved the fiduciary duty claims against the *individual* defendants, not the corporation. RDI's Motion Pursuant to NRCP 12(b)(2) also did not ask for judgment in its favor, nor could it: the Rule 12(b)(2) motion was based on Plaintiff's standing to make *derivative* claims—*i.e.*, claims filed on RDI's behalf—against the directors.[2] Thus, RDI's Motion is legally out of bounds. There is no basis under Rule 60 or any other rule to grant RDI relief.

III. CONCLUSION

Based on the foregoing reasons, Plaintiff respectfully requests the Court deny RDI's Motion in its entirety.

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[2] Notably, RDI again failed to ask for an evidentiary hearing, as Plaintiff pointed out in his opposition brief. Thus, the 12(b)(2) Motion should have been denied even if not rendered moot by the dismissal of Plaintiff's claims against the remaining three Cotter defendants.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document(s) **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** to be served via the Court's Odyssey E-Filing System: to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	.	
	.	CASE NO. A-15-719860-B
Plaintiff	.	A-16-735305-B
	.	P-14-082942-E
vs.	.	
	.	DEPT. NO. XI
MARGARET COTTER, et al.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO RETAX COSTS

MONDAY, OCTOBER 1, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:	AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARSHALL M. SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ.

LAS VEGAS, NEVADA, MONDAY, OCTOBER 1, 2018, 9:20 A.M.

(Court was called to order)

THE COURT: That takes me to Cotter.

So, Ms. Levin, it's your motion.

MS. LEVIN: Good morning, Your Honor.

THE COURT: Hang up on whoever it is, please.

MS. LEVIN: I came with some documents. I'm sorry.

(Pause in the proceedings)

MS. LEVIN: Just a minute.

THE COURT: Just put him on hold.

Ms. Levin, I'm sorry for the interruption. Would you like to proceed?

MS. LEVIN: Yes. Thank you, Your Honor.

Your Honor, this is our motion to retax costs. The defendants have asked for 2.9 million in costs. They now have had two opportunities to meet their burden of proof that their extraordinary $2.9 million cost bills were not only actually incurred -- only also incurred for this case, but they were necessary and reasonable. Now, they failed twice in that obligation. The first time they mainly gave us spreadsheets for the majority of the costs sought. The second time they gave us on the eve of the hearing an 8-volume, 3,500-page document dump essentially saying, here's the backup for our outrageous expenses and you figure it out.

They have an obligation to in good faith only seek

those costs that met all those three criteria. They still did not check for reasonableness even after we gave them very specific examples for each category with citations to the exhibit pages that appeared either unnecessary, unreasonable, or unsupported or all of the above. So they only responded in their opposition brief to examples we had given them, if that.

So although they say they omitted costs related solely to the T-2 plaintiffs, they did not. Those costs permeate all categories from filing fees to research to travel costs to ediscovery. We should not have been put in this position to do their work, Your Honor, given the outrageous amount of costs they seek, the sloppy and untimely piecemeal production of documents, and the absence of declarations showing, rather than just saying, that these costs were actually incurred, necessarily incurred, and reasonable.

The Court should use its discretion to drastically reduce those costs, if not allow them at all.

THE COURT: Okay. So I have the memo of costs and disbursements in front of me.

MS. LEVIN: Okay.

THE COURT: And I went through your charts and your comparisons. Your number that you would urge me to give for Category Number 1, which is all filing fees is what?

MS. LEVIN: Well, it's RDI's filing fees especially. The fact that RDI was a nominal defendant, they should have

kept a wholly neutral position in this case, they were not even the prevailing party. And that's our main argument with respect to RDI. It is not a prevailing party. There's no judgment entered in its favor. So they shouldn't be entitled to any of their $1.2 million costs. So that's our main argument.

But with respect even -- even the filing fees, even assuming the Court would allow them fees, we gave them -- again, we -- I think they should be disallowed at least 3,000 of their $3,700 filing fees, because all of those filings were related to a motion to compel arbitration, that was 1.5. There were six joinders in dispositive motions of the corporate defendants, so they joined essentially in the defense of directors who were alleged to have breached the duty to the company. So those filing fees should be disallowed. And there's numerous T-2 filings.

So, again, we did the work for them because they didn't want to do their job. But there are many other filing fees, and their free dollars, whatever. But, again, so our main argument is none of them should be allowed. But if the Court's going to allow anything, they shouldn't -- at least $3,000 should be deducted.

THE COURT: Do you want to go through any of the other categories for me? I understand your issue on the expert witnesses. I'm going to deal with that separately, Mr.

Ferrario, given the statutory limitation.

Anything else?

MS. LEVIN: Well, I can go category by category, Your Honor. Now, first --

THE COURT: You did in your briefing. So I'm asking you if there's anything else you want to tell me that wasn't in the briefing.

MS. LEVIN: I would like to actually -- what we did is in the reply brief we cited -- we meant to give more cites to the appendix, and what we did is instead we cited back to the original motion appendix. So I have some examples. Because, again, they gave us a backup, but the backup --

THE COURT: I'd be happy to take your examples.

MS. LEVIN: Okay. Great. And I'll share with the other side, too.

THE COURT: Great. We'll mark it as Court's Exhibit 1.

MS. LEVIN: So Court Exhibit 1 would be supplemental examples for the Byrd & Morella [phonetic] costs, and the other one would be supplemental examples of the backup for Quinn Emanuel, which further supports the unreasonableness --

THE COURT: So I'm going to mark them collectively as Court's Exhibit 1.

MS. LEVIN: Thank you, Your Honor.

THE COURT: All right. Anything else you'd like to

add, Ms. Levin?

MS. LEVIN: If I can just look -- because I think you understand our arguments and --

THE COURT: I do.

MS. LEVIN: Oh. One thing, also. The Cotter defendants and the copy costs, Mr. Searcy's declaration says we gave the costs per copy. But their backups do not support that. You have to kind of figure it out yourself by deducting -- they're giving the number, and then you have to go and look through a line that says US Dollar. It says 2, but that's actually the quantity. So it turned out they billed 24 cents per page, which is excessive. So we would submit that -- you can see that, by the way, on exhibit page 2926. So that should be cut in half.

I mean, I can go through each categories, Your Honor. If you have questions --

THE COURT: You don't need to. I read your brief.

MS. LEVIN: Okay.

THE COURT: What I'm trying to find out is there anything else you want to tell me that wasn't in the brief or you want focus on.

MS. LEVIN: Okay. Can I just go through my --

THE COURT: Because you did a really good job on the reply before, and Mr. Ferrario did a pretty good job on the opposition brief.

MS. LEVIN: I'll take that as a compliment.

Well, the whole necessity of the -- well, I think we put that in the reply brief, too.

THE COURT: All right.

MS. LEVIN: I'll stop right here.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Good morning, Your Honor.

THE COURT: Good morning.

MR. FERRARIO: I really don't quite know where to begin. I know Ms. Levin's only been in this case for a few months. And it's unfortunate Mr. Krum's not here to kind of -- we could go back to the beginning. But Your Honor will remember that this case started back in the summer of 2015. And it started when Mr. Cotter was terminated from his position as the CEO of Reading. And Your Honor will remember that the company contested whether -- and that's who I represent, I represent the company -- contested whether Mr. Cotter was an appropriate derivative plaintiff. And then we contested his position as a derivative plaintiff. We said this was a matter that should be covered in arbitration which was pending in California. And Your Honor denied our requests to put an end to this case. And Your Honor gave Mr. Cotter throughout the course of these proceeding every opportunity to try to manufacture a claim that Your Honor characterized at

one hearing as truly unique. There was no other case in the country that we could find -- a derivative case --

THE COURT: The story of my life.

MR. FERRARIO: -- that approximated this. And what I find strange is now we stand here in front of this Court with the Court having given Mr. Cotter every opportunity --

THE COURT: A million two in expert expenses, Mr. Ferrario?

MR. FERRARIO: Well, Your Honor, let -- and, you know, I represent the company, again. We had an indemnity obligation. But you know what I'll tell Your Honor, and you know this. When you have big cases sometimes you have big expert fees. What is missing --

THE COURT: There was nothing I saw in the experts that were presented to me or provided information in this case that would put us in the realm of a million two.

MR. FERRARIO: Well, let me tell you how it happened, Your Honor. I'd be happy to do that, okay.

THE COURT: That'd be great.

MR. FERRARIO: Because what's missing here is the claim that they brought, okay. They brought a claim against the directors for one hundred to $150 million, okay.

THE COURT: Is that why they stayed at The Four Seasons in the chairman suites?

MR. FERRARIO: I don't -- you know what, I hate

arguing costs motions. You want to say, stay at the Golden Nugget, I could care less about that.

THE COURT: Well, they should have.

MR. FERRARIO: This case is about -- no, there's other things there. But I don't even -- you do what you want on that. I could care less, okay. The big categories here are expert fees and ediscovery, okay.

THE COURT: Yes. And I have questions on ediscovery. But right now I'm asking you questions on experts.

MR. FERRARIO: And on experts what's lost in their pleading, and they don't deal with that, it was a hundred to $150 million claim. Now, the point I want to make here is this. I have to go back to the beginning. Mr. Cotter was not an outsider. He was an insider. He intentionally pled claims against the directors to avoid having to make a demand on the board. He said the directors were all interested. After this Court gave him every opportunity to prove those claims, the Court found on summary judgment that he didn't have any evidence to support that.

Now, during the course of the case --

THE COURT: For some of the directors.

MR. FERRARIO: Yeah. For five independent directors.

THE COURT: For some of the directors.

MR. FERRARIO: Exactly. There was an issue of fact with the others, okay.

THE COURT: Yes.

MR. FERRARIO: Three. But the point here is you gave him every opportunity to do that.

Now, let's look at how the case evolved. Hundred to $150 million in damages. What happens as we're running up to trial in January, okay, all of a sudden we're here, not in this courtroom, upstairs --

THE COURT: I had a jury.

MR. FERRARIO: We had a jury outside.

THE COURT: We were next door.

MR. FERRARIO: Mr. Cotter suddenly taken ill two days after we're in court, right. What do we find out about this illness? Well, the illness kind of coincides with him not paying his experts. What happens after that? Your Honor, says, you know what, if you're going to call an expert at trial on your hundred to $150 million damage claim then what you have to do is you have to present to the other side all of the billing records so we can see if there was some shenanigans with regard to the continuance in January.

What happens? They abandon the hundred to $150 million damage claim on the eve of the June trial. What does that tell you about their case? Was Mr. Cotter acting in his fiduciary capacity as a derivative plaintiff when he

abandoned that claim? We were going to trial in the summer, just a couple months ago, on claims -- I don't even know what we were fighting over. And I'm not sure Mr. Krum did at the time Your Honor granted the final relief that brings us here.

So when we go back and we look at the evolution of this case I submit that the fees are reasonable. And you know how you can test that? Where are their bills?

THE COURT: Other than Chief Justice [inaudible].

MR. FERRARIO: I am willing to bet you, okay, that the bills they didn't pay -- because we believe they stiffed their experts, which is why they wouldn't show up -- that the bills they didn't pay approximate the charges that were incurred by the experts who were hired by the directors.

Now, having said that, we dealt with some very novel claims regarding the value of stock tied to certain actions of the company. They put this forth this fella Duarte Silva, who came up with these wild calculations. Well, you know what, when you put forth somebody that comes up with wild calculations then the other side apparently, under their scenario, shouldn't defend against that. Which is farcical. You'd have to call your malpractice carrier. Even though you think their claim is ridiculous, you still have to go out and find an expert to counter that.

Experts that deal in these types of cases, deal with these economic theories, are far and few between. And so when

you look at this in light of the claims that were made you're talking about expert fees that are less -- well, 1 percent of the claim that was being made. I don't see how you can say that's unreasonable, especially without calling them on the carpet and finding out what their expert charged to manufacture the claim that they abandoned.

THE COURT: Other than Chief Justice Steel, who they told me how much he charged.

MR. FERRARIO: And that's a good one, too. Because I stood in front of you a couple -- probably a year and a half ago and I said, why have they called Justice Steel. Justice Steel's report -- and he might be a nice fella. I've never met the guy.

THE COURT: He is a nice fellow.

MR. FERRARIO: But this guy writes a report and he says, this is what would happen in Delaware. And I stood in front of Your Honor and I said, we're not in Delaware, so why is Justice Steel testifying. And Your Honor said, we'll deal with this at trial.

THE COURT: Well, because the Nevada Supreme Court sometimes looks to Delaware in making decisions about things.

MR. FERRARIO: But Your Honor is --

THE COURT: I know.

MR. FERRARIO: -- the arbiter of the law here, not Justice Steel.

THE COURT: Well, no. The Nevada Supreme Court is.

MR. FERRARIO: What he -- well, finally.

THE COURT: Yeah.

MR. FERRARIO: Well, if we get past you. But the --

THE COURT: Or file a writ.

MR. FERRARIO: Or file a writ. But Justice Steel's report was, quite frankly, nothing more than a memo on Delaware law that any of us could have commissioned one of our associates, quite frankly, to prepare. And so we argued against that. But they wanted that.

And the point here I'm making, Your Honor, you gave them every opportunity. They ran the costs up.

THE COURT: A million two in experts, Mr. Ferrario.

MR. FERRARIO: Absolutely. That's what it cost.

THE COURT: Okay.

MR. FERRARIO: We've given you the bill.

THE COURT: So let's go to my other issue.

MS. LEVIN: Your Honor, can I respond?

THE COURT: No. I'm not done.

MS. LEVIN: Okay.

THE COURT: The ediscovery. There have been issues raised about the lack of pro ration among various other litigation and claims that are -- these parties are continuing to be in, including the litigation in California and the arbitration matter, as well as the probate matter here. Can

you tell me why haven't pro rated the expenses for the ediscovery and the hosting?

MR. FERRARIO: Well, we actually have.

THE COURT: How do I tell that?

MR. FERRARIO: I can tell you right now that there are -- well, actually, it's kind of interesting, because the parties -- for example, the Cotter sisters, okay --

THE COURT: Yes.

MR. FERRARIO: -- they're involved in the litigation in California, the trust litigation and all that.

THE COURT: And here in the probate case now.

MR. FERRARIO: And here in the probate case.

THE COURT: Since you let Mr. Peek be involved.

MR. FERRARIO: And Mr. Peek is involved, yes. And so are hosting this information, okay. And it was done because of what happened in this case. That's what started this.

THE COURT: So did you pro rate it among the other cases?

MR. FERRARIO: You know, I would have to ask Ms. Hendricks that question. But I'm sure it was pro rated.

THE COURT: How can I tell?

MR. FERRARIO: And the reason that I know that is because I'm getting phone calls from the lawyer in California on the trust case asking why he's still having to pay

Navigant. That's -- and I just had those calls last week. So they are paying that.

THE COURT: Okay.

MR. FERRARIO: All right.

THE COURT: So then let me ask you the other question related to the ediscovery. Typically when there are consulting expenses related to the ediscovery those either show up in the expert category or in some category other than just the straight ediscovery hosting. Because it's consulting. Can you tell me why you didn't show it someplace else and put an ediscovery category?

MR. FERRARIO: I can't, Your Honor. I mean, that was --

THE COURT: How much of it is consulting? Is it a quarter?

MR. FERRARIO: Oh --

THE COURT: Seems like a lot in looking at it.

MR. FERRARIO: I don't think it was that much in consulting with them. I mean, the fact of the matter is the biggest fight we had here on ediscovery was with then Mr. Krum before Ms. Levin got into the case. And I made some notes. We had 12 custodians that we had to go through. And remember, Your Honor, how this case unfolded. At the very --

THE COURT: You mean that you guys wanted a preliminary injunction --

MR. FERRARIO: You're going --

THE COURT: -- I set a hearing, and you never showed up?

MR. FERRARIO: You're going right where I'm going.

THE COURT: Okay.

MR. FERRARIO: Right at the beginning fire drill, injection, he shouldn't have been discharged. Then all of a sudden he abandons that. Then we get into -- and he wanted, you know, expedited discovery, which was a fire drill on our part, which is why some of these costs are up. Then he abandons that. Then we get into regular discovery. But what happened, and Your Honor will recall this, Mr. Cotter sought to amend his complaint and basically challenged almost every major decision made by the board of the course of this litigation without really any merit to that. So we had -- we would continually go back and have to look for data and harvest data because he would amend his complaint or he'd bring something else in and say, wait a while, you know, you didn't entertain this offer from Patten Vision [phonetic] and that was a breach of your fiduciary duty. There we go again on another discover goose chase, all because of the plaintiff. It's not like I sat around one day in the midst of all the other cases I had and I said to Ms. Hendricks and Ms. Cowden, hey, let's just do some discovery in Cotter. That's not why this happened. It happened because of the plaintiff. And the

plaintiff was never interested in benefitting the company. And that became clear at the end of this case when he abandoned his damage claims and we were going to trial challenging essentially two decisions that I think monetarily to the company might have come in at about 125,000 bucks, something like that.

So I now go all the way back to the beginning. We stood in front of you three years ago and we said this was a personal dispute by Mr. Cotter, he wasn't an appropriate derivative plaintiff, he was trying to vindicate his rights personally, not to benefit the company. And that's exactly what the conduct in this case showed. You can stand here now and say all sorts of things, oh, this is ridiculous, oh, they should have stayed at The Four Seasons or they shouldn't have stayed here. You can talk all you want. Look at how the case unfolded.

And the final point I'll make is this. It all starts, all of this starts -- and Your Honor will see this probably in your other case -- with Mr. Cotter preying on his father while he's on his death bed.

THE COURT: That's my probate case, not today.

MR. FERRARIO: But that's where this --

THE COURT: But that's not today.

MR. FERRARIO: -- all starts.

THE COURT: But, Mr. Ferrario, that's not this case

today.

MR. FERRARIO: I understand. So here, Judge, we've given you the declarations. You've got tons of receipts. You want to cut down The Four Seasons, I don't care, okay. You want to noodle the filing fees -- I guess I wasn't supposed to file anything even though it was a novel case and Your Honor said we could file and participate, I guess we couldn't file.

THE COURT: I didn't say that. No, I didn't.

MR. FERRARIO: I didn't understand that part of their opposition. You want to do all that, I'm fine with the Court's discretion on those things. But on experts and on the ediscovery, all of that was necessitated by the conduct of the plaintiff to meet, A, the claims that were being made, which they pooh-pooh now, oh, well, wait a while, why did you do that. Hundred to $150 million. I don't think there's a lawyer in this room that would stand up and say those are not significant claims. We couldn't knock that expert out. You let him in. They only abandoned him. So we're not supposed to defend against that, they're not supposed to defend against that? And then I have to -- the company has to indemnify them. What happened in this is case is you gave him a chance and he lost.

And what happened? In a case where he should have been trying to benefit the company he cost the company dearly. And at the end of the day he couldn't prove his claim, and he

lost. And you know what, sometimes you have to pay.

THE COURT: Okay. Mr. Searcy, is there anything you want to add?

MR. SEARCY: Nothing for me, Your Honor. Thank you.

THE COURT: Thank you.

Ms. Levin.

MS. LEVIN: Your Honor, if I can --

THE COURT: Mr. Johnson, you don't want anything, do you, since you're Mr. Searcy's local counsel?

MR. JOHNSON: I'm okay, Your Honor.

THE COURT: Okay.

MS. LEVIN: To start with the last point, Mr. Ferrario's argument that we are now saying that the claims were frivolous, that's not right. That's their argument. That's what they've been saying the whole case, this is such a frivolous case, there's no evidence, we always knew there was no evidence. So, nevertheless, without any evidence and by calling the claims speculative they went out and incurred $45,000 in Westlaw research, or claiming that only Nevada law applied. Then they went out and hired a damage expert, initial damage expert, who charged a half million dollars to look at whether the stock went up or down.

Now, the claim that they're saying that the complaint sought 100 million damages, they don't cite to the complaint. And there's a reason for that. Because it's not

in the complaint. Where that comes out of is Duarte Silva, the expert Duarte Silva, who put in his expert report that -- in a footnote, that he believed that there could be a potential damage of 100 million. So every time they say, this is what the plaintiff cost us to do, the plaintiff cost; no, the plaintiff did not seek those damages. They had already hired an expert who charged a half a million dollars. So for them to say, you know, this is all caused by the plaintiff is not true.

The point about the ediscovery, you understand ediscovery, Your Honor. We gave you a chart. This is not a document-intensive case. And they say it's the plaintiff, it's the plaintiff. We gave you the requests for productions. There were six very distinct categories in the plaintiff's first request for production. And you know what RDI did? They put the entire company server, the entire company server on a database, almost 2 terabytes. The allegations pertaining to Mr. Cotter's termination only went back one year. Nevertheless, they put the entire server on there. So for them to say, this is all caused by Cotter, no, it's caused by their mismanagement of this case. They just had a party with this case.

They only produced 71,000 pages of documents, not documents, pages of documents. And it was in rolling productions. They're saying now it was all because of us. It

was -- they took forever to get RDI to produce anything.

Your Honor asked about how the consulting fees, if it was a quarter. We gave you a chart and we added up all the consulting fees that they charged as, quote, "ediscovery costs." They came to about half, $455,000 in consulting fees. And we showed Your Honor the way that these consultants at the Navigant database vendor, how they billed their entries. "Client communication term reporting, client conference calls. Client conference calls, communication, assignment. Client conference calls," and hours and hours that were billed at attorney rates, at 350 per hour. They did searches, they did typical paralegal work. We shouldn't have to pay for that.

And, Your Honor, you have an example of a case where you didn't allow even close to the amount that they're seeking. And that's the In re DISH Network case. Now, in that case there are many more custodians. They have to --

THE COURT: But we were in a very short time frame in the DISH Network case, because the SLC did their investigation and we had a summary judgment motion. We were on that case, what, less than a year.

MS. LEVIN: Right. But those documents went back to 2008.

THE COURT: [Unintelligible].

MS. LEVIN: Here the plaintiff filed -- in 2015 he specifically limited his document requests to documents

starting in January '14. It was year earlier. And in the DISH Network case they have to search three different servers.

So what I'm saying, Your Honor, to get to the bottom of this, the consulting fees are outrageous. The sheer amount of ediscovery costs are outrageous given the relatively few documents that they produced. It just doesn't warrant even close to this.

So -- and the rest is in our briefs.

THE COURT: All right. Thank you.

The categories in the memorandum of costs and disbursement are retaxed for Number 3. The expert witnesses are reduced to a total of 250,000 for Mr. Clausner, 250,000 for Mr. Roll. Mr. Chavem's amount of one fifty-two is compensated. Mr. Foster, his amount of 201,000 is compensated. (Transcriber's note: All names above phonetic)

With respect to the statutory limitation the Court finds that, given the nature of this particular case, is it appropriate to exceed the statutory limitation, that the amounts that have been requested in large part by the defendants are excessive.

With respect to any costs by Mr. Gould, those costs are too late. Mr. Gould was successful on a motion for summary judgment almost a year ago at this point, so regardless of Reading's position in the case with indemnification, the motion is late.

With respect to Category Number 12, given the consulting that is included which may be more appropriate as a request for attorneys' fees or should have been included as expert expenses, depending upon how you categorize it, the amount is reduced to $450,000.

With respect to Category 13 the motion to retax is granted.

With respect to Category 14 the motion to retax is granted.

With respect to Category 15 the motion to retax is granted.

With respect to Category 16 the motion to retax is granted.

And with respect to Category 17 the motion to retax is granted.

Anything else?

MR. FERRARIO: Thank you, Your Honor.

THE COURT: 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:49 A.M.

* * * * *

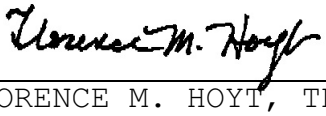
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



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10/1/18

DATE

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Attorneys for Plaintiff, James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **LETTER TO COURT OBJECTING TO PROPOSED ORDER**

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Case Number: A-15-719860-B

Plaintiff James J. Cotter, Jr.'s letter to the Court objecting to RDI's proposed order on Plaintiff's Motion to Retax Costs is attached hereto as Exhibit 1.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **LETTER TO COURT OBJECTING TO PROPOSED ORDER,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 2nd day of November, 2018.

By: */s/ Patty A. Quinn*
An employee of Morris Law Group

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ERRATA TO LETTER TO COURT OBJECTING TO PROPOSED ORDER**

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On November 2, 2018, plaintiff James J. Cotter, Jr., filed a Letter to the Court Objecting to Proposed Order.

Upon closer review it appears that Exhibit 1 of the Letter to the Court Objecting to Proposed Order was not attached. A true and correct copy of Exhibit 1 is attached hereto.

MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **ERRATA TO LETTER TO COURT OBJECTING TO PROPOSED ORDER,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 2nd day of November, 2018.

By: /s/ Patricia A. Quinn

Exhibit 1

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
6/12/15	Complaint		
8/14/15	Cotter's First RFP to individual defendants and RDI, seeking 6 categories of documents limited to "documents created or dated on or after January 1, 2014."		**Exhibit 1**
8/17/14	T2 Plaintiff's First RFP seeking 6 categories of documents starting 6/1/2013 to date		**Exhibit 2**
9/10/15	Navigant invoice to RDI: **$6,936.25** "discovery consulting" fees $225 - $350/hr. **$5,000** "collection fees"	Block-billing; No description of "collection" work performed; No identification of "client"; Boilerplate descriptions.	EP 0893-0894
9/17/15	RDI's responses to First RFPs of Plaintiff and T2 Plaintiffs: RDI **imaged RDI's server**		**Exhibit 3**
10/16/15	Navigant invoice to RDI: **$45,098.75** "consulting fees" & **$121,823.24** expenses including:	Excessive hours (>100) for "consulting" at excessive hourly rates ($225-350) akin to hourly attorney rates and above paralegal rates; No breakdown per timer;	EP 0898 – 0913

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
	$90,050 [data in] 1801 GB **$22,760** [data out] 113.80 GB **$2,500** collection 2 mobile devices **$675** Relativity user fees [9]	Pervasive block-billing (3.0 & 3.5) with inadequate descriptions ("client communication and support") by Ashley Smith; Pervasive block-billing by Caroline Miller (3.5; 4.0; 8.0); unnecessary uploading of entire RDI server given limited RFPs; Excessive data processing; Excessive user fees;	
10/16/15	Navigant bill to Quinn Emanuel: **$10,023.75** "consulting fees" **$19,824.60** [data in] 107.16 GB **$375** Relativity user fees [5]	Non-descriptive, repetitive block-billing by Ashley Smith ("client communication (N. Helpern), discovery consulting"); Paralegal-type search work (1.80 "Ran searches"; "Checked on problematic document for client"); Excessive fees for data processing; Excessive number of users	EP 0919 – 0923
10/29/15	RDI 2nd. Supp.: **RDI 96 –2467**		Ex. 3
11/13/15	RDI 3rd Supp.: **RDI 2468 –4224**		Ex. 3
11/13/15	Navigant bill GT: **$38,807.50** "consulting fees" **$525** Relativity user fees [7]	Pervasive block-billing and paralegal work by Amy Tsang (review, analysis, and production of data); All 26.5 hours of Ashley Smith block-billed with similar generic descriptions	EP 0928 – 0940

Date	Description	Reason	Doc Nos
		("Client communication, conference calls. Discovery consulting, case management"); All 47.3 hours of Caroline Miller block-billed up to 6.5 hours doing pervasive and excessive paralegal-type work (esp. given the number of GT users); 17.25 of paralegal work by Stacey Levy (*e.g.*, "review Ellen Cotter's mobile device conversations"); Excessive number of users.	
11/13/15	Navigant bill QE: **$6,005.00** "consulting fees" $225 -350/hr **$10,454.35** [data processing] 56.51 gb **$375.00** user fees [5]	Excessive block-billed paralegal-type work by Miller and Stacey Levy; excessive fees for data processing	EP 0943 – 0947
11/19/15	RDIs 4th Supp.: **RDI 4274 – 11216**		Ex. 3
12/03/15	RDIs 5th Supp.: **RDI 11276 – 16039**		Ex. 3
12/09/15	**T2** 2nd set of RFPs		Ex. 2
12/21/15	Navigant bill RDI: **$16,025.00** consulting **$1,050.00** Relativity user fees **[14 users]**	All 7 hours of Ashley Smith block-billed at $350 per hour with similar generic descriptions ("Client communication. Discovery consulting"); All 23.6 hours of Caroline Miller block-billed doing pervasive and excessive paralegal-type	EP 0955 - 0962

Date	Description	Reason	Doc Nos
		work (productions; prepare searches; production chart work); excessive (14) users.	
12/21/15	Navigant bill QE - **$5,971.25** consulting fees	2.5 hours of Ashley Smith block-billed at $350 per hour with similar generic descriptions ("Client communication, production QC"); 9.3 hours of Caroline Miller block-billed and paralegal-type work (run searches; prepare productions; prepare searches)	EP 0965 – 0958
01/12/16	Navigant bill –RDI **$34,350.00** professional fees **$1,125.00** Relativity user fees [15]	Excessive number of hours (116.75) in "consulting" and "project management" fees: 8.5 hours of Ashley Smith block-billed at $350 per hour with *identical* generic descriptions ("Case management: Multiple correspondence with client [who?] regarding project status, next steps, project requests and requirements"); **67.5** hours of Caroline Miller block-billed up to 6.5 hours of paralegal-type work (run searches; prepare productions; prepare searches); and 29.2 hours of Nicole LeBeau with paralegal-type work	EP 0976 – 0991

Date	Description	Reason	Doc Nos
		(searches, determine privileged documents etc.)	
01/12/16	Navigant bill – QE **$7337.50** professional fees	Block-billing; 25H paralegal-type work Nicole Miller	EP 0994 – 0999
01/12/16	Navigant bill – Productions **$3,542.50** professional fees	Paralegal-type work Miller	EP 1002 - 1005
1/13/16	RDI's responses to T2 2nd set of RFP that sought records going back 4 years		Ex. 2
02/19/16	Navigant bill - **$50,786.25** professional fees **$1,125.00** Relativity user fees [15]	Excessive number of hours (179.05) in "consulting" and "project management" fees: 18 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("On-going communication with client, discovery consulting. . . .") ; **95.15** hours of Caroline Miller block-billed up to 7 hours with paralegal-type work (run searches; prepare productions; prepare searches and batches); and **51.6** hours of Nicole LeBeau with paralegal-type work (searches, determine privileged documents etc.)	EP 1008 – 1025
02/19/16	Navigant bill – QE **$4087.50** professional fees	Block-billing for paralegal work Miller (production searches)	EP 1029 - 1031

Date	Description	Reason	Doc Nos
02/24/16	RDI's 1st Supp. response to T2 RFPs: **RDI 22815 – 22823**		Ex. 2
02/24/16	Navigant bill – **$4,937.50** professional fees	11.5 of block-billed hours Miller; paralegal-type work (1.6 "prepared letters for destruction of clawback. . . .")	EP 1034 – 1037
03/14/16	Navigant bill GT - **$21,356.75** professional fees **$2,777.50** [data in] 55.55 gb **$5,326.00** [data out] 26.63 gb **$675.00** Relativity user fees [9]	Excessive project management hours (79.53 and consulting; 7.5 hours of Ashley Smith block-billed at $350 per hour with generic descriptions ("Case management . . . ."); 51.5 hours of Caroline Miller block-billed up to 6 hours of paralegal-type work (run searches; prepare productions; prepare searches); and 9.8 hours of Nicole LeBeau with paralegal-type work (review search terms, identify documents for redaction); excessive number of users	EP 1040 – 1049
03/14/16	Navigant bill – QE **$17,180.00** professional fees **$675** Relativity user fees [9]	Excessive block-billing and paralegal work (run searches; discuss search terms; at excessive rates; billing 1.5 hours "wait[ing] for Ellen Cotter to arrive"; 6. H travel to directors' houses for data collection	EP 1052 – 1061
03/14/16	Navigant bill – **$3,767.50** professional fees	Block-billing	EP 1064 – 1067

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
03/15/16	Navigant bill – SHEPPARD MULLIN **$840.18**	Unrelated	EP 1070 – 1072
03/18/16	T2s 2nd RFP to RDI		Ex. 2
03/23/16	RDIs 2n Supp. T2 RFP		Ex. 2
04/26/16	Navigant bill – GT **$26,036.25** professional fees **$3,080.50** [data in] 61.61 gb **$675** Relativity user fees [9]	Excessive number of hours (115.85) in "consulting" and "project management" fees: 15 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("Case management, continuing discussion. . . ."); excessive 72.40 hours of Caroline Miller block-billed up to 5.8 hours of paralegal-type work and inadequate descriptions; and 10.2 hours of Nicole LeBeau with paralegal-type work (searches, determine privileged documents etc.)	EP 1075 - 1089
04/26/16	Navigant bill – QE **$8,207.50** professional fees **$675** Relativity user fees [9]	Excessive, needless consulting hours, block-billing	EP 1092 – 1100
04/26/16	Navigant bill – **$2,847.50** professional fees	Excessive consulting, block-billing	EP 1103 – 1106
5/18/16	Navigant bill – QE **$12,591.25** professional fees	54.85 hours of excessive project management all block-billed; 6 hours of work related to unknown "Sacks firm"	EP 1129 - 1140

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
5/18/16	Navigant bill – Productions **$4,195.00**	10 hours of excessive project management all block-billed	EP 1143 – 1146
5/20/16	Navigant bill – GT **$23,473.75** professional fees **$450.00** Relativity user fees [6]	Excessive (>100 hours) consulting and project management work block-billed; inadequately described (Smith & Miller)	EP 1109 – 1126
6/20/16	RDIs 3rd Supp. response to T2s 2nd RFPs		Ex. 2
6/20/16	RDI's 6th Supp. Resp. to Cotter's RFPs		Ex. 1
6/20/16	RDI's 6th Supp. response to T2s RFPs		Ex. 2
06/21/16	RDI's 1st Supp. Resp. to Cotter's 2nd RFPs: RDI **37197 – 54528**		Ex. 1
6/21/16	RDI's 1st Supp. Resp. to T2s 3rd RFPs		Ex. 2
6/24/16	Cotter's 2nd RFPs to RDI		
6/29/16	Navigant bill – RDI **$14,355.00** professional fees	Excessive number of hours in "consulting" and "project management" fees block-billed at excessive rates	EP 1149 – 1159
6/29/16	Navigant bill – QE **$5,602.50** project management fees **$375.00** Relativity user fees [5]	Excessive number of hours in "project management" fees block-billed at excessive rates	EP 1162 – 1167

Date	Description	Reason	Doc Nos
6/29/16	Navigant bill – **$3,397.50** professional fees **$375.00** Relativity user fees [5]	Excessive number of hours in "project management" fees block-billed at excessive rates	EP 1170 – 1174
6/29/16	Navigant bill – COTTER TRUST **$2,532.50**	Unrelated	EP 1177
7/12/16	**Motion for T2 settlement**		
7/21/16	Navigant bill –RDI **$14,907.50** professional fees **$300.00** Relativity user fees [4]	Excessive number of hours (45.4) in "consulting" and "project management" fees: 26.5 hours of Ashley Smith block-billed at $350 per hour with near-identical generic descriptions ("Ongoing client communication [with who?] RE project requests around depo prep"; excessive 16 hours of Caroline Miller block-billed	EP 1182 – 1188
	Other invoices		EP 1189- EP 1217
	TOTAL billing by 7/21/16: $635,722.20		
1/6/17	Navigant bill – RDI **$7952.50** professional fees **$5227.85** expenses [Nov-Dec hosting fees]	Excessive hours in "case" management and "project" management (29.7), numerous entries "Ongoing communication with client regarding additional production data	EP 1287- 1291

Date	Description	Reason	Doc Nos
		to export and load (10.5 hrs); production and export (17.3)	
1/6/2017	Navigant bill – QE **$6,660.00** professional fees **$3,890.87** expenses [Nov/Dec hosting fees)	Excessive hours in "project" management (29.60 hrs): production and export	EP 1293 – 1297
2/27/17	Navigant bill – QE **$5,557.50** professional fees **$2001.33** expenses	Excessive "project" management (24.7 hrs) – transition to other team members; productions (2 gb produced)	EP 1321 – 1325
12/20/17	Navigant bill – QE **$4,998.10** professional fees **$1,726.70** expenses	Excessive fees (25.6 hrs) – multiple searches for counsel for depositions	EP1426 – 1428
4/26/18	Navigant bill – QE **$5,883.75** professional fees **$2168.97** expenses	Excessive fees (26.15 hrs) – prepared clawback docs for redaction; document load for RDI; prepare productions (1 gb)	EP 1491 – 1493
6/25/18	Navigant bill – GT **$14,770.00** professional fees **$9,769.04** expenses	Excessive fees (62.20 hrs) for 103.1 gb in, 8.81 gb out re directors' data	EP 1508 - 1512
6/25/18	Navigant bill – QE **$24,980.00** professional fees **$3,231.42** expenses **$3,066.012** travel expenses	Excessive fees (78.8 hrs) collecting directors' data, processing; 9.65 gb in; unreasonable to travel to the data as opposed to send the data on hard drive	EP 1515 – 1520
8/20/18	Navigant bill – GT **$6,707.50** professional fees **$3,632.47** expenses	Excessive fees (29.7 hrs) 6/1 – 6/15/ 18; resubmissions for production, coding choices.	EP 1526 – 1527

RDI e-DISCOVERY

Date	Description	Reason	Doc Nos
8/16 – 7/20/18	Navigant bills remainder of case: **$249,154.18**		EP 1218 - 1533
6/15/18	RDI's 37th supplemental disclosures: total produced RDI **71544 – 71599**		Ex. 3; *see also* Ex. 4 to Motion to Retax

EXHIBIT 5

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
Andre Matyczynski			
06/2015	**$7,880.24** for Tim Storey airfare to NZ after board meeting	*No relation to litigation*	EP 1653
08/2015	**$4,060** for SPR reports	*No itemization or explanation*	EP 1665 – 1671
DOUG MCEACHERN			
02/12/2016	**$191.31** for breakfast w/EC, M. Ferrario, parking, mileage for Storey deposition	*Unnecessary to attend*	EP 1684
05/16/2016	**$96.00** train and taxi to Jim Cotter's depo	*Unnecessary to attend*	EP 1687
ELLEN COTTER			
07/2015	**$1,195.25** for Mandarin Hotel and other travel costs for "court" 7/10/2015 – 7/11/2015	*No hearing in this case until August 2015.*	EP 1712 – 1714
09/2015	**$1,348.26** for Mandarin Hotel and other travel costs for court 9/17/2015– 9/18/2015	*No court hearing on those dates*	EP 1730, 1733
05/2016	**$341.17** for Uber and meals for Margaret Cotter (MC) and EC depositions	*Excessive*	EP 1744 – 1746
07/2016	**$795.02** for travel costs for 7/28/2016 hearing on motion to approve T2 settlement in LV, incl. airfare and $241.16 dinner with Craig Tompkins ("CT")	*Unrelated to Plaintiff's case & excessive*	EP 1762, 1766

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
08/2016	**$883.61** for 7/28/2016 [T2 settlement] hearing (incl. Mandarin Hotel $497.53, Mandarin Hotel limo airport to hotel $85.00, Sweet Limousine LAX to EC home $97.75, Sweet Limousine LV trip $116.25)	*Unrelated to Plaintiff's case & excessive*	EP 1780 – 1781, 1790
10/2016	**$2,094.83** (incl. 9/29/16 stay at Mandarin, airfare, Oct. 1 meal for "litig. Meeting" with GT, Akin Gump (AG), and QE ($970.13) **$995.54** for 10/6/2016 court hearing [T2 settlement] (including for airfare, Sweet Limousine [2 charges for $222.50] Mandarin Hotel room, and $91.71 meal-	*Unrelated to case; AG was employment counsel in arbitration; excessive* *Unrelated to P's case; excessive*	EP 1798 – 1800
12/2017	**$14,500.37** including: Four Seasons director rooms at $3,183.72; Copier $3,825.00; Brook Furniture $2,505; Office space rental $4,066.65; and airfare $587.96	*Excessive and unnecessary costs due to choice of out of state counsel*	EP 1838 – 1841
01/2018	**$9,761.64** including: -12/29/2017: three limos, **$750** for transportation from Four Seasons to court -first class airfare for Mr. & Mrs. Gould from LA: **$1,760.40,**	*Excessive, extravagant local and long-distance transportation & travel costs for spouses*	EP 1894 – 1899

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
	-airfare for Mr. &Mrs. Kane from San Diego **$320.40,** -1/9-1/11/2018: three limos court to hotel **$750;** -two limos for Goulds to/from airport: **$500; ---** -1/7/2018: **4** limos: **$1,000** hotel/airport. - -computer rental QE: **380.82,** -1/8/2018 directors limos hotel/court: **$500,** -1/9/2018 limo airport/hotel McEachern & Adams: **$500** -1/10/2018 Sweet Limo EMC LV to home **$918.75** -1/13/2018 EC, MC meals **$322.22** -1/15/2018 Sweet Limo EMC LV to home **$787.50** -1/24/2018 Cox Comm IT/data QE: **$507.82**		
01/2018	**$420.40** Upgrade for airfare Mr. & Mrs Kane LV to SD	*Unnecessary / unreasonable spouse*	EP 1913 - 1914
02/2018	**$1,008.67** for LV office space	*Unnecessary expense due to choice of out of town counsel and availability of local counsel firm space*	EP 1919 – 1920, 1931 - 1932
05/2018	**$572.06** for 5/2/2018 hearing (including airfare $334.40 and Sweet Limo LAX to EC home $116.25)	*Unnecessary*	EP 1943 - 1944
LAURA BATISTA			

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
1/3 – 1/10/2018	**$880.70** Meals and mileage LA/LV/LA	*Unnecessary company expense*	EP 1953 – 1954
	MARGARET COTTER		
08/2015	**$2,418.36** for 8/12/2015 hearing [T2 motion to intervene] (incl. Mandarin Hotel, meals, taxis ($877.26) and Airfare LAX to NYC $1,541.10)	*Unrelated to Plaintiff's case; excessive unnecessary and unreasonable*	EP 1971 – 1972
12/2017	12/16/2017 airfare JFK to LAS **$1,038.98** 01/05/2018 airfare JFK LAS **$2,698.30** 1/9/2018 airfare LAS JFK **$2,228.30** 1/26/2018 taxi **$13.30** [not in LV]	*Excessively high, duplicate travel costs*	EP 1978 - 1980
	VICTOR ALBIZURES JR		
01/2018	**$451.72** incl. 1/10/2018 mileage $304.11 1/10/2018 meals $147.61	*No need shown*	EP 1993 – 1994
01/2018	**$623.52** incl. 1/3/2018 mileage $411.60 to LV and Cal Oaks 1/4/2017 lunch w/Laura $90	*No need shown; unnecessary travel to California; excessive meal cost*	EP 2000 – 2001
	WILLIAM ELLIS		
05/2015	**$359.21** for dinner and drinks with T Storey & lunch with Ghose	*Case not filed until 6/2015; no depositions held*	EP 2010 – 2011
07/2015	**$3,250** arbitration fee for Cotter	*Unrelated to this case; pertains to employment arbitration*	EP 2014 – 2015

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
CRAIG TOMPKINS			
2015	**$675.35** – all **flight changes** for trips to LV in July, August, October	*Unnecessary; unreasonable; no court hearings in July*	EP 2024 - 2025
07/2015	**$1,308.91** including: $792.70 flight Oregon (OR) LV OR $40 travel agent fee $413.34 for Mandarin hotel	*Unnecessary luxury accommodations and travel; unrelated travel: there were no court proceedings in this litigation in July 2015*	EP 2028, 2030
08/2015	**$1,288.86** for 8/11/2015 court hearing T2 motion to intervene, including: $790.60 airfare OR LV OR $413.93 Mandarin hotel	*Unrelated to this case; unnecessary & excessive luxury accommodations*	EP 2034 - 2035
09/2015	**$3,052.91** for a 9/10/2015 hearing re motion to dismiss, expedite discovery, including: **$1,774.09** airfare OR LV OR **$73.82** Mandarin hotel 9/1 **$200.00** 9/2 dinner with Susan O'Malley [?] **$149.38** taxis 9/2 in LV **$150.40** Mirage hotel **$657.02** Mirage hotel 9/11 – 12/2015 **$48.74** taxis LV 9/11 – 12	*Unnecessary and unreasonable luxury accommodations, meals, and first-class travel*	EP 2054 – 2055
10/2015	**$2,097.60** for 10/29/2015 Rule 16 conference, including costs for:	*Unnecessary; unreasonable luxury accommodations,*	EP 2065 - 2066

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
	$532 airfare OR LV OR 10/6 - 7 **$312.48** Mirage hotel 10/6 **$431.96** airfare 10/28 **$580.60** Mirage hotel 10/28 – 10/29 **$117.52** taxis 10/28 – 10/30	*needless travel to non-substantive hearing*	
11/2015	**$1,468.96** for 10/29/2015 Rule 16 conference trip, including additional costs for: **$580.60** Mirage hotel 10/30 – 11/1 trip to LV and Indio **$187.06** taxis **$556** In Ace transportation LV to Indio (?)	*Unnecessary; unreasonable luxury accommodations, needless travel to non-substantive hearing; unrelated travel*	EP 2078 - 2079
12/2015	**$224.20** for 1/8/2016 trip to LV [illegible backup] – no hearing		EP 2087 - 2088
01/2016	**$1,797.28** for 1/19/2016 hearing RDI motion to dismiss, including: **$939.00** airfare OR LV OR **$398.21** Mirage hotel **$123.99** meals at Mirage **$200** airfare 1/28 [no hearing]	*Unnecessary; unreasonable luxury accommodations, meals, needless travel; unrelated travel*	EP 2091 – 2092
05/2016	**$1,921.13** for 5/26/2016 hearing T2 motion for preliminary injunction, including: **$1,179.78** airfare OR LV OR **$528.39** Mirage hotel **$155.66** meals	*Unnecessary; unreasonable luxury accommodations, meals, first-class, needless travel; unrelated to Plaintiff's case.*	EP 2100 – 2101

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
06/2016	**$2,193.08** for 6/21/2016 hearing motion to disqualify T2 plaintiffs, including: **$804.20** airfare 6/11 -12 [no hearing] **$222.88** Caesars Palace 6/11 – 12 **$206.24** Caesars Palace 6/21 – 6/22 **$132.31** dinner at Nobu 6/22	*Unnecessary; unreasonable luxury accommodations, meals, travel; unrelated to Plaintiff's case.*	EP 2109 – 2110
07/2016	**$1,318.94** for 7/28/2016 hearing motion to approve T2 settlement, including: **$1,006.40** airfare OR LV OR **$292.74** Mandarin hotel	*Unnecessary; unreasonable luxury accommodations, meals, first-class travel; unrelated to Plaintiff's case.*	EP 2118 – 2119
08/2016	**$1,514.03** including: **$312.48** Mandarin hotel 7/28 **$1,098.80** 8/1 airfare OR LAX OR [not LV travel]	*No need shown; travel unrelated to court hearing; apparent business expense; excessive first-class travel and hotel costs*	EP 2123 - 2124
10/2016	**$3,582.87** for 10/6/2016 hearing T2 settlement Including: **$1,854.80** airfare OR LV OR **$402.32** Mandarin hotel 10/27/2016 hearing MPSJ: **$480.10** airfare OR LV OR **$278.68** Mandarin hotel	*Unrelated to Plaintiff's case; excessive first-class travel and hotel costs* *Excessive hotel costs.*	EP 2131 – 2132
11/2016	**$359.41** Mandarin hotel 10/29	*Excessive hotel costs*	EP 2138 – 2139

RDI EMPLOYEE EXPENSES

Date	Description	Reason	Doc Nos
05/2017	**$67.19** Uber fees 5/19 – 20 to Venetian	*Unrelated; no LV hearing*	EP 2144 – 2145
09/2017	**$1,562.74** for 9/28/2016 hearing motion to compel communications re advice of counsel Including: **$790.60** airfare **$687.85** Caesar's Palace	*Unnecessary; excessive & unreasonable luxury hotel accommodations, first-class travel*	EP 2149 – 2150
11/2017	**$1,252.71** for 11/20/2017 hearing motion for evidentiary hearing adequacy of derivative plaintiff, including: **$722.40** airfare **$180.27** Caesars Palace **$122.84** dinner Nobu **$107.74** meals	*Unnecessary; excessive & unreasonable hotel and meal costs, first-class travel*	EP 2157 – 2160, 2166 – 2167, 2171 – 2172
12/2017	**$4,046.25** for 12/11/2017 hearing pre-trial motions including: **$495.80** airfare OR LV OR **$245.90** Caesars Palace AND **$3,143.00** deposit for residence 1/5–2/5/2018	*Unnecessary; excessive lodging costs for trial; no proof costs incurred/non-refundable*	EP 2175 – 2176
01/2018	**$1,109.89** for trial including: **$409.91** Caesars Palace meal 1/11 **$318.25** car mileage Playa Vista to LV, 1/4 & 1/14	*-Excessive meal costs; no need shown for travel*	EP 2185 – 2186, 2192 – 2193
05/2018	Costs for 5/2/2018 evidentiary hearing: **$409.69** airfare	*No need shown.*	EP 2196 – 2198

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James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** **Hearing Date: October 22, 2018** **Hearing Time: 9:00 a.m.**

Case Number: A-15-719860-B

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I. INTRODUCTION

Nominal defendant RDI filed a Motion for Judgment in its Favor because RDI just realized, in an "oops" moment, that is not a "prevailing party" and may not be entitled to a single dollar of the **$1.2 million** it recklessly spent to help the Cotter sisters prevail on claims that were not made against RDI but made on its behalf.

RDI's Motion is a legal nonstarter. The reason why nominal defendant RDI has "not yet received" and could not receive "judgment in its favor" is because Plaintiff did not make any claims against RDI. He made claims against directors, including his sisters for whom Greenberg Traurig (GT) piled up enormous costs and fees to defend. The Court cannot "fix" and rewrite history by ruling RDI can recoup its outrageous costs. Even assuming the Court could transform RDI from a nominal to an adverse party, the Court has already entered a final judgment in this case, which is now on appeal, and the Court no longer has jurisdiction to grant the "relief" RDI seeks. For these reasons and those set out below, the Court should deny RDI's opportunistic, procedurally-barred Motion in its entirety.

II. ARGUMENT

A. RDI is not entitled to judgment in its favor because Plaintiff's claims were made on its behalf and not against it.

1. RDI was a nominal defendant.

In a derivative case, the corporation must be named as a nominal defendant, but it is actually the "real party in interest" *on whose behalf* the derivative case is brought. *Ross v. Bernhard*, 396 U.S. 531, 538–39 (1970); *Patrick v. Alacer Corp.*, 167 Cal. App. 4th 995, 1005-09, 84 Cal.Rptr.3d 642, 652 (2008). Unless the lawsuit poses a threat to the corporation, a nominal defendant must " 'take and maintain a wholly neutral position taking sides neither with the complainant nor with the defending director.' " *Swenson v. Thibaut*, 250 S.E. 2d 279, 293-94 (N.C. App. 1978) (quoting *Solimine v.*

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Hollander, 129 N.J.Eq. 264, 19 A.2d 344 (1941)). The director defendants, especially those in "control" of the corporation, have no right to use the corporation for the purpose of "step[ing] in and, by answer, attempt to defeat what is practically its own suit and causes of action," nor do they have the right to "impose on the corporation the burden of fighting their battle." *Patrick,* 167 Cal. App. 4th at 1008 (internal quotation marks and citation omitted).

Here, Plaintiff filed a derivative lawsuit naming RDI only as a nominal defendant. All of Plaintiff's three complaints specifically distinguish between the individual director defendants—named "Defendants"—and RDI—named "Nominal Defendant" in the caption. *See,* June 12, 2015 Complaint, on file at 1 (Caption); Oct. 22, 2015 Am. Compl. ("FAC"), on file, at 1 (Caption); Sept. 2, 2016 Second Am. Compl ("SAC") on file, at 1 (Caption). Nowhere in *any* of the three complaints are "Defendants" defined to include RDI.

2. Plaintiff did not make claims against RDI.

None of Plaintiff's four causes of action was made against RDI. Rather, the claims were made against two or more of the individual "Defendants." *See, e.g.*, Compl. at 25 ("For Breach of Fiduciary - against All Defendants"); FAC at 43 ("Breach of Fiduciary Duty - Against MC, EC, Adams, Kane and McEachern"); SAC at 47 ("For Breach of Fiduciary - against All Defendants"); *id.* at 51 ("Aiding and Abetting Breach of Fiduciary Duty - Against MC and EC").

If there were any doubt about what "Defendants" meant, one only needs to look at the allegations following each of the causes of action made against "All Defendants." They all allege a variant of the same thing:

> Each of the **individual defendants**. . . . **was a director** of RDI. As such, each owed fiduciary duties **to** RDI . . . including fiduciary duties of care . . . good faith and loyalty **to** RDI.

SAC ¶ 174 at 48; *id*. ¶181 (to same effect); *id*. ¶188 (to same effect). RDI is not a "director of RDI" and RDI could not possibly breach fiduciary duties to itself. The paragraphs that follow only further confirm that Plaintiff's claims were not made against RDI. *See* ¶¶ 177-178 (alleging that "each of the **individual** defendants . . . breached their respective duties of care and good faith" and that Plaintiff **and the Company** and its other shareholders have suffered injury . . . .") (emphasis added).

Plaintiff did not seek damages or injunctive relief *against* RDI. He sought relief on *behalf* of RDI:

> As a result of the ongoing acts of Defendants, **the Company** [defined as RDI], Plaintiff and other RDI shareholders have suffered and will continue to suffer immediate and ongoing irreparable injury for which no adequate remedy at law exists, including as alleged herein. . . . .
>
> . . . unless such injunctive relief is granted, Plaintiff, **the Company** and other shareholders will suffer irreparable harm for which no adequate remedy at law exists.

E.g., Compl. ¶¶ 133-134; FAC ¶¶ 192-193 (emphasis added)

Plaintiff's SAC could not be clearer, saying in bold, capital letters: "**RDI AND RDI SHAREHOLDERS ARE INJURED.**" SAC at 45; *see also id*. at 53, ¶202 ("unless such injunctive relief is granted, Plaintiff, the Company and other shareholders will suffer irreparable harm"). Plaintiff's Prayer for Relief specifically asked for "**damages** incurred **by** RDI. . . ." *Id*. at 54, ¶ 5 (emphasis added).

RDI is also wrong in contending Plaintiff sought reinstatement from RDI. This is what the *T2 Plaintiffs* sought. *See* August 28, 2015 Verified Shareholder Derivative Compl. at 16 (B.(ii)) (seeking "an order reinstating James J. Cotter, Jr. as the President and CEO of RDI"). The relief Plaintiff Cotter Jr. asked for was an order confirming that the individual directors lacked independence or disinterestedness to vote on his

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termination so that their vote was invalid. SAC at 54, Prayer for Relief ¶3(a)-(e).

3. Plaintiff's request for proper disclosures did not pose a "threat" to the company.

Some courts outside Nevada have recognized a limited exception to the rule that a nominal defendant may generally not defend itself in a derivative suit. These courts have held that nominal defendants may defend themselves against derivative actions that threaten rather than advance the corporate interests, such as actions to: (1) interfere with a corporate reorganization; (2) interfere with internal management in the absence of an allegation of bad faith or fraud; (3) enjoin performance of contracts; or (4) appoint a receiver. *See National Bankers Life Ins. Co. v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) (citing cases); *see also Patrick*, 167 Cal. App. 4th. at 1010 (citing cases without deciding if such exception exists "under California law. . . or . . . not").

RDI cites all five subsections of ¶3 of Plaintiff's Prayer for Relief to argue that Plaintiff sought relief against RDI, but only ¶3(c) of the SAC even addressed RDI. That subsection asked both "RDI *and* the individual defendants to make . . . corrective disclosures . . . in advance of RDI's 2017 ASM . . . ." SAC ¶ 3(c) (emphasis added).[1] As RDI recognizes, this relief was based on conduct by the *individual* defendants, *id.* ¶101, which formed the basis for Plaintiff's third cause of action against the *individual* defendants for breach of fiduciary duty. *See id.* ¶¶ 188-190 (alleging that the directors breached their duties of candor and disclosure by failing to cause RDI to make "timely, accurate and complete disclosures" and by causing RDI to

[1] Plaintiff's Reply to RDI's Opposition to Plaintiff's Motion to Retax Costs mistakenly indicates that this ancillary relief was not sought until September 2016. Reply at 6:23-25. The October 22, 2015 FAC also included a similar ¶ 3(c) in the Prayer for Relief, although the initial complaint did not.

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"disseminate untimely and materially misleading if not inaccurate information . . . .").

Plaintiff's third cause of action did not come close to threatening RDI's existence so as to justify abandoning the "wholly neutral position" RDI was required to take. Other than citing cases, RDI's Motion never explains *how* the relief Plaintiff asked would be a threatening "incursion into its affairs." Motion at 4. Corrective disclosures, if they were warranted, would only further RDI's interests and those of its shareholders. Similarly, RDI does not explain how requiring the directors to have "*bona fide* qualifications" before becoming board members infringes on the corporation's "rights." Motion at 3:11. All that Plaintiff was asking for is compliance with proper principles of corporate governance.

4. RDI through GT voluntarily assumed an adversarial role.

Plaintiff did not treat RDI as anything other than a nominal defendant. Rather, RDI *unilaterally* undertook an adversarial role throughout this case, including by answering the FAC and SAC that were filed on its behalf, and by filing a series of adversarial joinders to the various motions for summary judgment filed by the individual defendants. *See, e.g.*, Oct. 3, 2016 Joinders, on file; March 29, 2016 Answer to FAC and December 20, 2016 Answer to SAC, on file.

The mere fact that RDI was a nominal defendant did not shield it from discovery, nor did requesting documents from it turn the company into an adversary of Plaintiff Cotter. Moreover, Plaintiff's counsel specifically objected to RDI's counsel making arguments in support of RDI's Joinder to the Cotter defendants' Partial MSJ on Independence. *See* Oct. 27 Hearing Tr. at 70:18-24 ("Your honor. . . They're a nominal defendant"). Thus, RDI's attempt to blame Plaintiff for the improper role RDI and its

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hopelessly conflicted counsel played throughout this litigation should be rejected.

B. The Court's August 8, 2018 judgment left nothing to decide.

"[A] final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." *Lee v. GNLV Corp.*, 996 P. 2d 416, 417 (Nev. 2000). Thus, an order granting summary judgment, which adjudicates the rights and liabilities of all parties and disposes of all issues presented in the case, is *final*. *Id*.

Here, the Court entered its Findings of Fact and Conclusions of Law granting summary judgment in favor of the only three remaining defendants, Ellen Cotter, Margaret Cotter, and Guy Adams ("FFCL"), on August 8, 2018. The Court had earlier granted summary judgment against the five other individual defendants, and had certified that order as final under NRCP 54(b). *See* January 4, 2018 Certification Order, on file. Because RDI was a nominal defendant on whose behalf Plaintiff's claims were brought and Plaintiff's rights and liabilities were decided in the FFCL, there was nothing left for the Court to decide.

1. RDI's counsel agreed that there was "nothing left" to decide.

During the June 19, 2018 hearing—right after the Court granted the director defendants' Motion for Summary Judgment on ratification ("Ratification MSJ")—the Court specifically asked counsel for the parties to go over their pleadings and tell the Court if there were any derivative claims left for her to decide. June 19, 2018 Hearing Tr. at 47:19-48:17. RDI's counsel, Mr. Ferrario, told the Court he did not "think anything else is left." *Id*. at 48:24. When the attorneys for the defendants and RDI came back into the courtroom, Mr. Ferrario told the Court that from his client's perspective

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and the perspective of the attorneys for the directors, there was "nothing left." June 19, 2018 Hearing Tr. at 49:13-15 ("There's nothing left from Mr. Tayback's perspective, my perspective, or the directors of the company. There's nothing left.")

Although RDI proposed to "submit" its Motion to Dismiss Pursuant to NRCP 12(b)(2)—which argued Plaintiff lacked derivative standing to bring his claims for failure to show that demand would have been futile—the Court held that the motion was moot. *Id.* at 49:8 ("It's moot. Unless there's something left, it's moot"). This had nothing to do with the Court "recognizing that resolution of the claims against the Individual Defendants also resolved claims against Reading." Motion at 3:24-26. As explained above, Plaintiff's SAC made **no claims** against RDI. What the Court recognized is that if there were no derivative claims left against the Cotter defendants, there was no basis to determine whether Plaintiff had standing to assert them. Put another way, Plaintiff's standing to bring his derivative claims became a moot issue after the Court granted the Cotter defendants' Ratification MSJ.

C. The Court lacks jurisdiction to grant RDI relief.

The "timely filing of a notice of appeal divests the district court of jurisdiction to act . . . ." *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 454–55 (2010) (internal quotation marks and citations omitted). Although the district court retains limited jurisdiction to review motions seeking to alter, vacate, or otherwise change or modify an order or judgment under NRCP 60(b) and to *deny* them, it does not have the jurisdiction to *grant* such a motion. *Foster*, 126 Nev. at 53, 228 P.3d at 455 (citation omitted).

Here, the Court entered its FFCL on August 8, 2018. They were filed on August 14, 2018. *See* FFCL, on file. Written notice of entry of the FFCL was given on August 17, 2018. *See* Notice of Entry of FFCL, on file.

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Plaintiff timely appealed from the FFCL to the Nevada Supreme Court on September 13, 2018. *See* Notice of Appeal, on file. Plaintiff earlier appealed from the Court's January 4 Order certifying as final the December 28, 2017 Order dismissing the five other individual defendants. Therefore, the Court lacks jurisdiction to grant RDI's motion.

It is too late for RDI to now argue, as it does, that the Court's order dismissing the five defendants is *not* final. Motion at 4:4-7. RDI argued the exact opposite four months ago, when it said:

> The Court's written order was issued December 28, 2017, and at the request of Plaintiff, was subsequently certified as a final judgment pursuant to NRCP 54(b). Plaintiff subsequently filed a Notice of Appeal as to that judgment. Accordingly, *this Court no longer has jurisdiction to alter or amend that judgment*.

Motion to Dismiss Pursuant to NRCP 12(b)(2) at 8:24-27 (emphasis added).

D. The Court should deny the Motion, because there are no grounds under Rule 60 to grant it.

If the Court were inclined to grant RDI relief, then the Court could "certify its intent to grant the requested relief . . . ." *Foster*, 228 P.3d at 455. But here, there is no basis to do so.

1. There was no clerical mistake.

Under Rule 60(a), a court may correct clerical mistakes in judgments, order, or other parts of the record. Nev. R. Civ. P. 60(a). As the Nevada Supreme Court has held:

> [A] clerical error is a mistake in writing or copying. As more specifically applied to judgments and decrees a clerical error is a mistake or omission by a clerk, counsel, or judge, or printer *which is not the result of the exercise of a judicial function*. In other words, a clerical error is one which *cannot reasonably be attributed to the exercise of judicial consideration or discretion*.

Channel 13 of Las Vegas, Inc. v. Ettlinger, 94 Nev. 578, 580, 583 P.2d 1085, 1086 (1978) (quoting *Marble v. Wright*, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961)); *see also Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 426-27, 836

P.2d 42, 45 (1992) (holding same and holding that the amended judgment was void because it involved a substantive change from the prior judgment).

RDI does not point to any fact showing that the clerk, its counsel, this Court, or a printer made a clerical mistake in writing or in copying the FFCL. Therefore, there is no basis for relief under Rule 60(a).

2. Omitting RDI from the FFCL was not an oversight.

Under NRCP 60(b)(1), a party seeking for relief from a final judgment on grounds of "mistake, inadvertence, surprise, or excusable neglect" has the burden of proving his position "by a preponderance of the evidence." *Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 446, 488 P.2d 911, 915 (1971) (internal quotation marks and citation omitted). The Court must also consider several factors before granting relief, including whether the moving party: (1) promptly sought relief; (2) lacked knowledge of the procedural requirements; and (3) acted in good faith. *Yochum v. Davis*, 98 Nev. 484, 486–87, 653 P.2d 1215, 1216-17 (1982) (citations omitted).

RDI cites Rule 60(b)(1) without discussion of the Rule's requirements or the application of them to the facts of this case. Motion at 5:4. Thus, RDI has utterly failed meet its burden of proof to obtain relief under Rule 60(b)(1). *Britz*, 87 Nev. at 446, 488 P.2d at 915 (holding that the appellants had "failed to carry their burden of showing mistake, inadvertence, surprise, or excusable neglect, either singly or in combination").

None of the applicable *Yochum* factors weigh in its favor in any event. Omitting RDI from the FFCL was not an oversight or mistake. RDI's counsel was intimately involved in drafting the FFCL. RDI is well aware that no claims were brought against it and that there was no basis to grant judgment in its favor. RDI's counsel is also well aware of the procedural rules of the Court; it only sought relief *after* realizing the impact of not being

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a prevailing party that would support recovery of costs. Thus, RDI's Motion cannot be considered as having been filed in good faith.

3. The Motion seeks a judgment that the Court does not have the authority to award.

Rule 60(b) does not permit a court to grant affirmative relief in *addition* to the relief contained in the prior order or judgment. *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007). In *Delay*, the appellants asked the district court to give them "a new judgment on a takings theory against a separate defendant"—the United States—"that was not bound by the prior judgment" *Id.* at 1047. The appellants sought to: (1) "revisit the circumstances that enabled the United States to be dismissed from the action under the controlling law of the time, [2] reinsert the United States as the real party-in-interest under a retrospective application of Lebron-Brentwood Academy, and [3] gain a judgment against the United States on a new takings claim to effect that Delay had a property interest in his cause of action against the United States that was destroyed upon termination of the Commission." *Id.* at 1046. The district court denied the Rule 60(b) motion, and the Ninth Circuit affirmed its ruling, because the federal rule, like Nevada's counterpart, only allows a party to set aside a judgment—not to substitute it for a new one granting additional relief. *Id.*

Here, RDI is asking the Court for similar affirmative relief after the fact that the Court cannot grant for reasons that go beyond Rule 60(b). RDI's request for judgment requires the Court to disregard its nominal defendant status and transform RDI into a "Defendant" by presuming Plaintiff made claims against RDI when in fact he did not. RDI also asks the Court to presume that RDI could breach fiduciary duties against itself *and* to presume that RDI prevailed on phantom claims not made against it. RDI did not even join in the Ratification MSJ. Even assuming it had joined, the

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ratification resolved the fiduciary duty claims against the *individual* defendants, not the corporation. RDI's Motion Pursuant to NRCP 12(b)(2) also did not ask for judgment in its favor, nor could it: the Rule 12(b)(2) motion was based on Plaintiff's standing to make *derivative* claims—*i.e.*, claims filed on RDI's behalf—against the directors.[2] Thus, RDI's Motion is legally out of bounds. There is no basis under Rule 60 or any other rule to grant RDI relief.

III. CONCLUSION

Based on the foregoing reasons, Plaintiff respectfully requests the Court deny RDI's Motion in its entirety.

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[2] Notably, RDI again failed to ask for an evidentiary hearing, as Plaintiff pointed out in his opposition brief. Thus, the 12(b)(2) Motion should have been denied even if not rendered moot by the dismissal of Plaintiff's claims against the remaining three Cotter defendants.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I caused the following document(s) **PLAINTIFF JAMES J. COTTER JR.'S OPPOSITION TO READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR** to be served via the Court's Odyssey E-Filing System: to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR.	.	
	.	CASE NO. A-15-719860-B
Plaintiff	.	A-16-735305-B
	.	P-14-082942-E
vs.	.	
	.	DEPT. NO. XI
MARGARET COTTER, et al.	.	
	.	**Transcript of**
Defendants	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION TO RETAX COSTS

MONDAY, OCTOBER 1, 2018

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

APPEARANCES:

FOR THE PLAINTIFF:	AKKE LEVIN, ESQ.
FOR THE DEFENDANTS:	MARSHALL M. SEARCY, ESQ. KEVIN M. JOHNSON, ESQ. MARK E. FERRARIO, ESQ.

LAS VEGAS, NEVADA, MONDAY, OCTOBER 1, 2018, 9:20 A.M.

(Court was called to order)

THE COURT: That takes me to Cotter.

So, Ms. Levin, it's your motion.

MS. LEVIN: Good morning, Your Honor.

THE COURT: Hang up on whoever it is, please.

MS. LEVIN: I came with some documents. I'm sorry.

(Pause in the proceedings)

MS. LEVIN: Just a minute.

THE COURT: Just put him on hold.

Ms. Levin, I'm sorry for the interruption. Would you like to proceed?

MS. LEVIN: Yes. Thank you, Your Honor.

Your Honor, this is our motion to retax costs. The defendants have asked for 2.9 million in costs. They now have had two opportunities to meet their burden of proof that their extraordinary $2.9 million cost bills were not only actually incurred -- only also incurred for this case, but they were necessary and reasonable. Now, they failed twice in that obligation. The first time they mainly gave us spreadsheets for the majority of the costs sought. The second time they gave us on the eve of the hearing an 8-volume, 3,500-page document dump essentially saying, here's the backup for our outrageous expenses and you figure it out.

They have an obligation to in good faith only seek

those costs that met all those three criteria. They still did not check for reasonableness even after we gave them very specific examples for each category with citations to the exhibit pages that appeared either unnecessary, unreasonable, or unsupported or all of the above. So they only responded in their opposition brief to examples we had given them, if that.

So although they say they omitted costs related solely to the T-2 plaintiffs, they did not. Those costs permeate all categories from filing fees to research to travel costs to ediscovery. We should not have been put in this position to do their work, Your Honor, given the outrageous amount of costs they seek, the sloppy and untimely piecemeal production of documents, and the absence of declarations showing, rather than just saying, that these costs were actually incurred, necessarily incurred, and reasonable.

The Court should use its discretion to drastically reduce those costs, if not allow them at all.

THE COURT: Okay. So I have the memo of costs and disbursements in front of me.

MS. LEVIN: Okay.

THE COURT: And I went through your charts and your comparisons. Your number that you would urge me to give for Category Number 1, which is all filing fees is what?

MS. LEVIN: Well, it's RDI's filing fees especially. The fact that RDI was a nominal defendant, they should have

kept a wholly neutral position in this case, they were not even the prevailing party. And that's our main argument with respect to RDI. It is not a prevailing party. There's no judgment entered in its favor. So they shouldn't be entitled to any of their $1.2 million costs. So that's our main argument.

But with respect even -- even the filing fees, even assuming the Court would allow them fees, we gave them -- again, we -- I think they should be disallowed at least 3,000 of their $3,700 filing fees, because all of those filings were related to a motion to compel arbitration, that was 1.5. There were six joinders in dispositive motions of the corporate defendants, so they joined essentially in the defense of directors who were alleged to have breached the duty to the company. So those filing fees should be disallowed. And there's numerous T-2 filings.

So, again, we did the work for them because they didn't want to do their job. But there are many other filing fees, and their free dollars, whatever. But, again, so our main argument is none of them should be allowed. But if the Court's going to allow anything, they shouldn't -- at least $3,000 should be deducted.

THE COURT: Do you want to go through any of the other categories for me? I understand your issue on the expert witnesses. I'm going to deal with that separately, Mr.

Ferrario, given the statutory limitation.

Anything else?

MS. LEVIN: Well, I can go category by category, Your Honor. Now, first --

THE COURT: You did in your briefing. So I'm asking you if there's anything else you want to tell me that wasn't in the briefing.

MS. LEVIN: I would like to actually -- what we did is in the reply brief we cited -- we meant to give more cites to the appendix, and what we did is instead we cited back to the original motion appendix. So I have some examples. Because, again, they gave us a backup, but the backup --

THE COURT: I'd be happy to take your examples.

MS. LEVIN: Okay. Great. And I'll share with the other side, too.

THE COURT: Great. We'll mark it as Court's Exhibit 1.

MS. LEVIN: So Court Exhibit 1 would be supplemental examples for the Byrd & Morella [phonetic] costs, and the other one would be supplemental examples of the backup for Quinn Emanuel, which further supports the unreasonableness --

THE COURT: So I'm going to mark them collectively as Court's Exhibit 1.

MS. LEVIN: Thank you, Your Honor.

THE COURT: All right. Anything else you'd like to

add, Ms. Levin?

MS. LEVIN: If I can just look -- because I think you understand our arguments and --

THE COURT: I do.

MS. LEVIN: Oh. One thing, also. The Cotter defendants and the copy costs, Mr. Searcy's declaration says we gave the costs per copy. But their backups do not support that. You have to kind of figure it out yourself by deducting -- they're giving the number, and then you have to go and look through a line that says US Dollar. It says 2, but that's actually the quantity. So it turned out they billed 24 cents per page, which is excessive. So we would submit that -- you can see that, by the way, on exhibit page 2926. So that should be cut in half.

I mean, I can go through each categories, Your Honor. If you have questions --

THE COURT: You don't need to. I read your brief.

MS. LEVIN: Okay.

THE COURT: What I'm trying to find out is there anything else you want to tell me that wasn't in the brief or you want focus on.

MS. LEVIN: Okay. Can I just go through my --

THE COURT: Because you did a really good job on the reply before, and Mr. Ferrario did a pretty good job on the opposition brief.

MS. LEVIN: I'll take that as a compliment.

Well, the whole necessity of the -- well, I think we put that in the reply brief, too.

THE COURT: All right.

MS. LEVIN: I'll stop right here.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Good morning, Your Honor.

THE COURT: Good morning.

MR. FERRARIO: I really don't quite know where to begin. I know Ms. Levin's only been in this case for a few months. And it's unfortunate Mr. Krum's not here to kind of -- we could go back to the beginning. But Your Honor will remember that this case started back in the summer of 2015. And it started when Mr. Cotter was terminated from his position as the CEO of Reading. And Your Honor will remember that the company contested whether -- and that's who I represent, I represent the company -- contested whether Mr. Cotter was an appropriate derivative plaintiff. And then we contested his position as a derivative plaintiff. We said this was a matter that should be covered in arbitration which was pending in California. And Your Honor denied our requests to put an end to this case. And Your Honor gave Mr. Cotter throughout the course of these proceeding every opportunity to try to manufacture a claim that Your Honor characterized at

one hearing as truly unique. There was no other case in the country that we could find -- a derivative case --

THE COURT: The story of my life.

MR. FERRARIO: -- that approximated this. And what I find strange is now we stand here in front of this Court with the Court having given Mr. Cotter every opportunity --

THE COURT: A million two in expert expenses, Mr. Ferrario?

MR. FERRARIO: Well, Your Honor, let -- and, you know, I represent the company, again. We had an indemnity obligation. But you know what I'll tell Your Honor, and you know this. When you have big cases sometimes you have big expert fees. What is missing --

THE COURT: There was nothing I saw in the experts that were presented to me or provided information in this case that would put us in the realm of a million two.

MR. FERRARIO: Well, let me tell you how it happened, Your Honor. I'd be happy to do that, okay.

THE COURT: That'd be great.

MR. FERRARIO: Because what's missing here is the claim that they brought, okay. They brought a claim against the directors for one hundred to $150 million, okay.

THE COURT: Is that why they stayed at The Four Seasons in the chairman suites?

MR. FERRARIO: I don't -- you know what, I hate

arguing costs motions. You want to say, stay at the Golden Nugget, I could care less about that.

THE COURT: Well, they should have.

MR. FERRARIO: This case is about -- no, there's other things there. But I don't even -- you do what you want on that. I could care less, okay. The big categories here are expert fees and ediscovery, okay.

THE COURT: Yes. And I have questions on ediscovery. But right now I'm asking you questions on experts.

MR. FERRARIO: And on experts what's lost in their pleading, and they don't deal with that, it was a hundred to $150 million claim. Now, the point I want to make here is this. I have to go back to the beginning. Mr. Cotter was not an outsider. He was an insider. He intentionally pled claims against the directors to avoid having to make a demand on the board. He said the directors were all interested. After this Court gave him every opportunity to prove those claims, the Court found on summary judgment that he didn't have any evidence to support that.

Now, during the course of the case --

THE COURT: For some of the directors.

MR. FERRARIO: Yeah. For five independent directors.

THE COURT: For some of the directors.

MR. FERRARIO: Exactly. There was an issue of fact with the others, okay.

THE COURT: Yes.

MR. FERRARIO: Three. But the point here is you gave him every opportunity to do that.

Now, let's look at how the case evolved. Hundred to $150 million in damages. What happens as we're running up to trial in January, okay, all of a sudden we're here, not in this courtroom, upstairs --

THE COURT: I had a jury.

MR. FERRARIO: We had a jury outside.

THE COURT: We were next door.

MR. FERRARIO: Mr. Cotter suddenly taken ill two days after we're in court, right. What do we find out about this illness? Well, the illness kind of coincides with him not paying his experts. What happens after that? Your Honor, says, you know what, if you're going to call an expert at trial on your hundred to $150 million damage claim then what you have to do is you have to present to the other side all of the billing records so we can see if there was some shenanigans with regard to the continuance in January.

What happens? They abandon the hundred to $150 million damage claim on the eve of the June trial. What does that tell you about their case? Was Mr. Cotter acting in his fiduciary capacity as a derivative plaintiff when he

abandoned that claim? We were going to trial in the summer, just a couple months ago, on claims -- I don't even know what we were fighting over. And I'm not sure Mr. Krum did at the time Your Honor granted the final relief that brings us here.

So when we go back and we look at the evolution of this case I submit that the fees are reasonable. And you know how you can test that? Where are their bills?

THE COURT: Other than Chief Justice [inaudible].

MR. FERRARIO: I am willing to bet you, okay, that the bills they didn't pay -- because we believe they stiffed their experts, which is why they wouldn't show up -- that the bills they didn't pay approximate the charges that were incurred by the experts who were hired by the directors.

Now, having said that, we dealt with some very novel claims regarding the value of stock tied to certain actions of the company. They put this forth this fella Duarte Silva, who came up with these wild calculations. Well, you know what, when you put forth somebody that comes up with wild calculations then the other side apparently, under their scenario, shouldn't defend against that. Which is farcical. You'd have to call your malpractice carrier. Even though you think their claim is ridiculous, you still have to go out and find an expert to counter that.

Experts that deal in these types of cases, deal with these economic theories, are far and few between. And so when

you look at this in light of the claims that were made you're talking about expert fees that are less -- well, 1 percent of the claim that was being made. I don't see how you can say that's unreasonable, especially without calling them on the carpet and finding out what their expert charged to manufacture the claim that they abandoned.

THE COURT: Other than Chief Justice Steel, who they told me how much he charged.

MR. FERRARIO: And that's a good one, too. Because I stood in front of you a couple -- probably a year and a half ago and I said, why have they called Justice Steel. Justice Steel's report -- and he might be a nice fella. I've never met the guy.

THE COURT: He is a nice fellow.

MR. FERRARIO: But this guy writes a report and he says, this is what would happen in Delaware. And I stood in front of Your Honor and I said, we're not in Delaware, so why is Justice Steel testifying. And Your Honor said, we'll deal with this at trial.

THE COURT: Well, because the Nevada Supreme Court sometimes looks to Delaware in making decisions about things.

MR. FERRARIO: But Your Honor is --

THE COURT: I know.

MR. FERRARIO: -- the arbiter of the law here, not Justice Steel.

THE COURT: Well, no. The Nevada Supreme Court is.

MR. FERRARIO: What he -- well, finally.

THE COURT: Yeah.

MR. FERRARIO: Well, if we get past you. But the --

THE COURT: Or file a writ.

MR. FERRARIO: Or file a writ. But Justice Steel's report was, quite frankly, nothing more than a memo on Delaware law that any of us could have commissioned one of our associates, quite frankly, to prepare. And so we argued against that. But they wanted that.

And the point here I'm making, Your Honor, you gave them every opportunity. They ran the costs up.

THE COURT: A million two in experts, Mr. Ferrario.

MR. FERRARIO: Absolutely. That's what it cost.

THE COURT: Okay.

MR. FERRARIO: We've given you the bill.

THE COURT: So let's go to my other issue.

MS. LEVIN: Your Honor, can I respond?

THE COURT: No. I'm not done.

MS. LEVIN: Okay.

THE COURT: The ediscovery. There have been issues raised about the lack of pro ration among various other litigation and claims that are -- these parties are continuing to be in, including the litigation in California and the arbitration matter, as well as the probate matter here. Can

you tell me why haven't pro rated the expenses for the ediscovery and the hosting?

MR. FERRARIO: Well, we actually have.

THE COURT: How do I tell that?

MR. FERRARIO: I can tell you right now that there are -- well, actually, it's kind of interesting, because the parties -- for example, the Cotter sisters, okay --

THE COURT: Yes.

MR. FERRARIO: -- they're involved in the litigation in California, the trust litigation and all that.

THE COURT: And here in the probate case now.

MR. FERRARIO: And here in the probate case.

THE COURT: Since you let Mr. Peek be involved.

MR. FERRARIO: And Mr. Peek is involved, yes. And so are hosting this information, okay. And it was done because of what happened in this case. That's what started this.

THE COURT: So did you pro rate it among the other cases?

MR. FERRARIO: You know, I would have to ask Ms. Hendricks that question. But I'm sure it was pro rated.

THE COURT: How can I tell?

MR. FERRARIO: And the reason that I know that is because I'm getting phone calls from the lawyer in California on the trust case asking why he's still having to pay

Navigant. That's -- and I just had those calls last week. So they are paying that.

THE COURT: Okay.

MR. FERRARIO: All right.

THE COURT: So then let me ask you the other question related to the ediscovery. Typically when there are consulting expenses related to the ediscovery those either show up in the expert category or in some category other than just the straight ediscovery hosting. Because it's consulting. Can you tell me why you didn't show it someplace else and put an ediscovery category?

MR. FERRARIO: I can't, Your Honor. I mean, that was --

THE COURT: How much of it is consulting? Is it a quarter?

MR. FERRARIO: Oh --

THE COURT: Seems like a lot in looking at it.

MR. FERRARIO: I don't think it was that much in consulting with them. I mean, the fact of the matter is the biggest fight we had here on ediscovery was with then Mr. Krum before Ms. Levin got into the case. And I made some notes. We had 12 custodians that we had to go through. And remember, Your Honor, how this case unfolded. At the very --

THE COURT: You mean that you guys wanted a preliminary injunction --

MR. FERRARIO: You're going --

THE COURT: -- I set a hearing, and you never showed up?

MR. FERRARIO: You're going right where I'm going.

THE COURT: Okay.

MR. FERRARIO: Right at the beginning fire drill, injection, he shouldn't have been discharged. Then all of a sudden he abandons that. Then we get into -- and he wanted, you know, expedited discovery, which was a fire drill on our part, which is why some of these costs are up. Then he abandons that. Then we get into regular discovery. But what happened, and Your Honor will recall this, Mr. Cotter sought to amend his complaint and basically challenged almost every major decision made by the board of the course of this litigation without really any merit to that. So we had -- we would continually go back and have to look for data and harvest data because he would amend his complaint or he'd bring something else in and say, wait a while, you know, you didn't entertain this offer from Patten Vision [phonetic] and that was a breach of your fiduciary duty. There we go again on another discover goose chase, all because of the plaintiff. It's not like I sat around one day in the midst of all the other cases I had and I said to Ms. Hendricks and Ms. Cowden, hey, let's just do some discovery in Cotter. That's not why this happened. It happened because of the plaintiff. And the

plaintiff was never interested in benefitting the company. And that became clear at the end of this case when he abandoned his damage claims and we were going to trial challenging essentially two decisions that I think monetarily to the company might have come in at about 125,000 bucks, something like that.

So I now go all the way back to the beginning. We stood in front of you three years ago and we said this was a personal dispute by Mr. Cotter, he wasn't an appropriate derivative plaintiff, he was trying to vindicate his rights personally, not to benefit the company. And that's exactly what the conduct in this case showed. You can stand here now and say all sorts of things, oh, this is ridiculous, oh, they should have stayed at The Four Seasons or they shouldn't have stayed here. You can talk all you want. Look at how the case unfolded.

And the final point I'll make is this. It all starts, all of this starts -- and Your Honor will see this probably in your other case -- with Mr. Cotter preying on his father while he's on his death bed.

THE COURT: That's my probate case, not today.

MR. FERRARIO: But that's where this --

THE COURT: But that's not today.

MR. FERRARIO: -- all starts.

THE COURT: But, Mr. Ferrario, that's not this case

today.

MR. FERRARIO: I understand. So here, Judge, we've given you the declarations. You've got tons of receipts. You want to cut down The Four Seasons, I don't care, okay. You want to noodle the filing fees -- I guess I wasn't supposed to file anything even though it was a novel case and Your Honor said we could file and participate, I guess we couldn't file.

THE COURT: I didn't say that. No, I didn't.

MR. FERRARIO: I didn't understand that part of their opposition. You want to do all that, I'm fine with the Court's discretion on those things. But on experts and on the ediscovery, all of that was necessitated by the conduct of the plaintiff to meet, A, the claims that were being made, which they pooh-pooh now, oh, well, wait a while, why did you do that. Hundred to $150 million. I don't think there's a lawyer in this room that would stand up and say those are not significant claims. We couldn't knock that expert out. You let him in. They only abandoned him. So we're not supposed to defend against that, they're not supposed to defend against that? And then I have to -- the company has to indemnify them. What happened in this is case is you gave him a chance and he lost.

And what happened? In a case where he should have been trying to benefit the company he cost the company dearly. And at the end of the day he couldn't prove his claim, and he

lost. And you know what, sometimes you have to pay.

THE COURT: Okay. Mr. Searcy, is there anything you want to add?

MR. SEARCY: Nothing for me, Your Honor. Thank you.

THE COURT: Thank you.

Ms. Levin.

MS. LEVIN: Your Honor, if I can --

THE COURT: Mr. Johnson, you don't want anything, do you, since you're Mr. Searcy's local counsel?

MR. JOHNSON: I'm okay, Your Honor.

THE COURT: Okay.

MS. LEVIN: To start with the last point, Mr. Ferrario's argument that we are now saying that the claims were frivolous, that's not right. That's their argument. That's what they've been saying the whole case, this is such a frivolous case, there's no evidence, we always knew there was no evidence. So, nevertheless, without any evidence and by calling the claims speculative they went out and incurred $45,000 in Westlaw research, or claiming that only Nevada law applied. Then they went out and hired a damage expert, initial damage expert, who charged a half million dollars to look at whether the stock went up or down.

Now, the claim that they're saying that the complaint sought 100 million damages, they don't cite to the complaint. And there's a reason for that. Because it's not

in the complaint. Where that comes out of is Duarte Silva, the expert Duarte Silva, who put in his expert report that -- in a footnote, that he believed that there could be a potential damage of 100 million. So every time they say, this is what the plaintiff cost us to do, the plaintiff cost; no, the plaintiff did not seek those damages. They had already hired an expert who charged a half a million dollars. So for them to say, you know, this is all caused by the plaintiff is not true.

The point about the ediscovery, you understand ediscovery, Your Honor. We gave you a chart. This is not a document-intensive case. And they say it's the plaintiff, it's the plaintiff. We gave you the requests for productions. There were six very distinct categories in the plaintiff's first request for production. And you know what RDI did? They put the entire company server, the entire company server on a database, almost 2 terabytes. The allegations pertaining to Mr. Cotter's termination only went back one year. Nevertheless, they put the entire server on there. So for them to say, this is all caused by Cotter, no, it's caused by their mismanagement of this case. They just had a party with this case.

They only produced 71,000 pages of documents, not documents, pages of documents. And it was in rolling productions. They're saying now it was all because of us. It

was -- they took forever to get RDI to produce anything.

Your Honor asked about how the consulting fees, if it was a quarter. We gave you a chart and we added up all the consulting fees that they charged as, quote, "ediscovery costs." They came to about half, $455,000 in consulting fees. And we showed Your Honor the way that these consultants at the Navigant database vendor, how they billed their entries. "Client communication term reporting, client conference calls. Client conference calls, communication, assignment. Client conference calls," and hours and hours that were billed at attorney rates, at 350 per hour. They did searches, they did typical paralegal work. We shouldn't have to pay for that.

And, Your Honor, you have an example of a case where you didn't allow even close to the amount that they're seeking. And that's the In re DISH Network case. Now, in that case there are many more custodians. They have to --

THE COURT: But we were in a very short time frame in the DISH Network case, because the SLC did their investigation and we had a summary judgment motion. We were on that case, what, less than a year.

MS. LEVIN: Right. But those documents went back to 2008.

THE COURT: [Unintelligible].

MS. LEVIN: Here the plaintiff filed -- in 2015 he specifically limited his document requests to documents

starting in January '14. It was year earlier. And in the DISH Network case they have to search three different servers.

So what I'm saying, Your Honor, to get to the bottom of this, the consulting fees are outrageous. The sheer amount of ediscovery costs are outrageous given the relatively few documents that they produced. It just doesn't warrant even close to this.

So -- and the rest is in our briefs.

THE COURT: All right. Thank you.

The categories in the memorandum of costs and disbursement are retaxed for Number 3. The expert witnesses are reduced to a total of 250,000 for Mr. Clausner, 250,000 for Mr. Roll. Mr. Chavem's amount of one fifty-two is compensated. Mr. Foster, his amount of 201,000 is compensated. (Transcriber's note: All names above phonetic)

With respect to the statutory limitation the Court finds that, given the nature of this particular case, is it appropriate to exceed the statutory limitation, that the amounts that have been requested in large part by the defendants are excessive.

With respect to any costs by Mr. Gould, those costs are too late. Mr. Gould was successful on a motion for summary judgment almost a year ago at this point, so regardless of Reading's position in the case with indemnification, the motion is late.

With respect to Category Number 12, given the consulting that is included which may be more appropriate as a request for attorneys' fees or should have been included as expert expenses, depending upon how you categorize it, the amount is reduced to $450,000.

With respect to Category 13 the motion to retax is granted.

With respect to Category 14 the motion to retax is granted.

With respect to Category 15 the motion to retax is granted.

With respect to Category 16 the motion to retax is granted.

And with respect to Category 17 the motion to retax is granted.

Anything else?

MR. FERRARIO: Thank you, Your Honor.

THE COURT: 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:49 A.M.

* * * * *

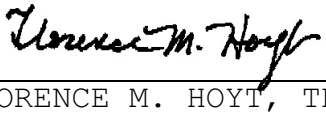
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

10/1/18

DATE

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Attorneys for Plaintiff, James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **LETTER TO COURT OBJECTING TO PROPOSED ORDER**

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Case Number: A-15-719860-B

Plaintiff James J. Cotter, Jr.'s letter to the Court objecting to RDI's proposed order on Plaintiff's Motion to Retax Costs is attached hereto as Exhibit 1.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **LETTER TO COURT OBJECTING TO PROPOSED ORDER,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 2nd day of November, 2018.

By: */s/ Patty A. Quinn*
An employee of Morris Law Group

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NOT USED

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ERRATA TO LETTER TO COURT OBJECTING TO PROPOSED ORDER**

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On November 2, 2018, plaintiff James J. Cotter, Jr., filed a Letter to the Court Objecting to Proposed Order.

Upon closer review it appears that Exhibit 1 of the Letter to the Court Objecting to Proposed Order was not attached. A true and correct copy of Exhibit 1 is attached hereto.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **ERRATA TO LETTER TO COURT OBJECTING TO PROPOSED ORDER,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 2nd day of November, 2018.

By: /s/ Patricia A. Quinn

Exhibit 1

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November 2, 2018

VIA HAND DELIVERY

The Honorable Elizabeth Gonzalez
Regional Justice Center, Dept. 11
200 Lewis Avenue
Las Vegas, Nevada 89101

Re: *James J. Cotter, Jr., v. Margaret Cotter, et al.*
Case No. A-15-719860-B

Dear Judge Gonzalez:

On behalf of Plaintiff James J. Cotter, we object to RDI's proposed order on Plaintiff's Motion to Retax—in particular paragraph 5 of the proposed findings of fact—because the proposed findings have no basis in the transcript of the October 1, 2018 hearing on the Motion to Retax or the Court's minute order respecting that hearing, which reads, in relevant part:

> 10/01/2018 9:00 AM
> . . . . COURT ADVISED the categories in the Memorandum of Costs and Disbursement are retaxed for Number 3. The expert witnesses are reduced to $250,000.00 for Mr. Klausner, $250,000.00 for Mr. Roll, the $152 amount for Mr. Strombom is compensated and Mr. Foster's amount of $201,000 is compensated. With respect to the statutory limitation, COURT FINDS that given the nature of this particular case, is it appropriate to exceed the statutory limitation, that the amounts that have been requested in large part by defendants are excessive. . . .

Further, given that under *Khoury v. Seastrand*, 377 P.3d 81, 95 (Nev. 2016) and *Frazier v. Drake*, 131 Nev., Adv. Op. 64, 357 P.3d 365, 378 (Ct.App.2015), it is for the Court to provide a reasoned analysis and state

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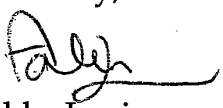
the basis for awarding expert witness costs above $1,500 per expert, we have particular concern with RDI's proposed findings that are unsupported by the record evidence (*e.g.*, "that the expert testimony was very important to the Defendants' preparation of their defense"); inconsistent with the Court's minute order (*e.g.*, the "hourly fees were reasonable" and "in line with the fees ordinarily charged by experts in the respective fields"), and speculative. (*E.g.*, "Had the matter gone to trial, and Plaintiff presented the testimony of his designated experts, the experts' testimony would most likely have been highly significant to the outcome of the case").

Sincerely,



Akke Levin

AL:pq
cc: All Counsel (Via Odyssey eFileNV Electronic Service)

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc. Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER 1) GRANTING IN PART AND DENYING IN PART MOTION TO RETAX AND SETTLE COSTS, AND 2) ENTERING JUDGMENT FOR COSTS** **Date of Hearing: October 1, 2018** **Time of Hearing: 8:30 a.m.**

This Matter came before the Court on October 1, 2018 on Plaintiff's Motion to Retax Costs. Plaintiff James J. Cotter, Jr. appeared by and through his counsel, Akke Levin, Esq. Reading International, Inc. ("Reading") appeared by and through its counsel Mark E. Ferrario, Esq. The Individual Defendants appeared by and through their counsel, Marshall M. Searcy, Esq. and Kevin M. Johnson, Esq.

Case Number: A-15-719860-B

The Court, having considered the Memorandum of Costs and support therefore submitted by the Defendants, and the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 24, 2018, Reading submitted a Verified Memorandum of Costs on behalf of itself and the Individual Defendants, stating its total recoverable costs as $2,917,257.00. Later, in its Opposition to Plaintiff's Motion to Retax, Reading adjusted the amount claimed to $2,883,044.37. This amount was broken down into 17 numbered cost categories. In support of its request for costs, both in the Verified Memorandum and in its Opposition to the Motion to Retax, Reading produced spread sheets listing disbursements, which amounts were verified by respective counsel; as well as invoices, receipts, and similar data showing the expenditures. Additionally, Reading produced declarations by counsel stating the reasons the various expenses were incurred.

2. In his Motion to Retax, Plaintiff challenged all costs incurred by Reading, on the grounds that it was a nominal defendant and not the prevailing party; and all costs incurred by William Gould, on the grounds that Gould failed to timely file his cost bill after he obtained a final judgment that was certified as final in January 2018. Plaintiff separately challenged most categories of costs incurred by Reading and the Individual Defendants on numerous grounds, including that the costs were unnecessary or unreasonable, unsupported, or not properly recoverable.

3. The Court finds that expenses incurred on behalf of Mr. Gould may not be recovered, as the deadline for Mr. Gould to claim such costs had long passed when he filed to recover his costs.

4. The Court finds that cost categories 1, 2, and 4-11 were actually, necessarily, and reasonably incurred for the defense of this case.

5. As to category 3, which stated costs incurred for expert expenses, the Court determines that an amount greater than $1,500 per expert is appropriate, because the circumstances surrounding each expert's testimony was of sufficient necessity to require the larger fee. Reviewing the factors set forth in *Frazier v. Drake*, 357 P.3d 365, 377 (Nev. Ct. App. 2015), as discussed in

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both the Memorandum of Costs and Opposition to the Motion to Retax, the Court finds that the expert testimony was very important to the Defendants' preparation of their defense, particularly in light of the Plaintiff's damages expert's opinion that damages were as high as $150 million, as well as Plaintiff's retention of a former Chief Judge of the Delaware Chancery Court as a corporate governance expert. While the matter here ultimately resolved without a trial, Defendants had to prepare their experts for a trial that had been scheduled to commence in January, and also were engaged in preparation in anticipation of the rescheduled trial. Had the matter gone to trial, and Plaintiff presented the testimony of his designated experts, the experts' testimony would most likely have been highly significant to the outcome of the case.

Defendants experts were each well known in their fields, with academic and professional accomplishments. The hourly fees charged were reasonabl comparable to similar experts, including those retained by Plaintiff, and in line with the fees ordinarily charged by experts in the respective fields.

Based on the above analysis, the Court determines that the fees incurred by Mr. Strombom and for Mr. Foster are compensable in their entirety, and the fees incurred for Mr. Klausner and Mr. Roll are compensable in reduced amounts. The compensable amounts are:

Mr. Klausner - $250,000

Mr. Roll - $250,000

Mr. Strombom - $152,000

Mr. Foster - $201,000

6. As to category 12, which stated costs incurred for e-discovery, the Court finds that the consulting fees that were included in the invoices would be more appropriate as a request for attorneys' fees or should not have been included as expert expenses, and justifies reducing the compensable amount to $450,000, which amount is reasonable considering the circumstances of this case.

7. The Motion to Retax is granted as to the expenses set forth in Categories 13-17.

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CONCLUSIONS OF LAW

1. In category 1, for filing fees, Reading and the director defendants other than Gould (hereafter collectively "Reading") are entitled to reimbursement of their costs in the amount of $9,160.24.

2. In Category 2, for Deposition Reporters' Fees, Reading is entitled to reimbursement of its costs in the amount of $111,208.15.

3. In Category 3, for expert witness fees, Reading is entitled to reimbursement of its costs in the amount of $853,000.00.

4. In Category 4, for process servers, Reading is entitled to reimbursement of its costs in the amount of $1,001.86.

5. In Category 5, for official reporters' fees, Reading is entitled to reimbursement of its costs in the amount of $3,874.89.

6. In Category 6, for photocopies, Reading is entitled to reimbursement of its costs in the amount of $12,931.73.

7. In Category 7, for telephone calls/conferences, Reading is entitled to reimbursement of its costs in the amount of $1,112.62.

8. In Category 8, for postage, Reading is entitled to reimbursement of its costs in the amount of $3,566.32.

9. In Category 9, for Deposition travel expenses, Reading is entitled to reimbursement of its costs in the amount of $52,053.77.

10. In Category 10, for computerized legal research, Reading is entitled to reimbursement of its costs in the amount of $53,936.41.

11. In Category 11, for couriers, Reading is entitled to reimbursement of its costs in the amount of $2,473.74.

12. In Category 12, for E-Discovery, Reading is entitled to reimbursement of its costs in the reduced amount of amount of $450,000.

13. Reading is not entitled to reimbursement of the costs claimed in Categories 13-17.

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ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion to Retax and Settle Costs is Granted in Part and Denied in Part.

2. The Clerk shall enter final judgment in favor of Defendant Reading and against Plaintiff James J. Cotter, Jr. for costs in the amount of **$1,554,319.73**.

DATED this 5 day of November, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

GREENBERG TRAURIG, LLP

MARK E. FERRARIO, ESQ. (BAR NO. 1625)
KARA B. HENDRICKS, ESQ. (BAR NO. 7743)
TAMI D. COWDEN, ESQ. (BAR NO. 8994)
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

Case No. A-15-719860-B
Dept. No. XI

NOTICE OF ENTRY OF ORDER

TO: All parties and their counsel of record:

YOU AND EACH OF YOU will please take notice that the *Order 1) Granting in Part and Denying in Part Motion to Retax and Settle Costs, and 2) Entering Judgment for Costs* was entered on November 6, 2018. A copy of said order is attached hereto.

DATED: this 6th day of November, 2018.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Notice of Entry of Order*** be filed and served via the Court's Odyssey E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED: this 6th day of November, 2018

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc. Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER 1) GRANTING IN PART AND DENYING IN PART MOTION TO RETAX AND SETTLE COSTS, AND 2) ENTERING JUDGMENT FOR COSTS** **Date of Hearing: October 1, 2018** **Time of Hearing: 8:30 a.m.**

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Case Number: A-15-719860-B

The Court, having considered the Memorandum of Costs and support therefore submitted by the Defendants, and the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, makes the following Findings of Fact and Conclusions of Law:

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3. The Court finds that expenses incurred on behalf of Mr. Gould may not be recovered, as the deadline for Mr. Gould to claim such costs had long passed when he filed to recover his costs.

4. The Court finds that cost categories 1, 2, and 4-11 were actually, necessarily, and reasonably incurred for the defense of this case.

5. As to category 3, which stated costs incurred for expert expenses, the Court determines that an amount greater than $1,500 per expert is appropriate, because the circumstances surrounding each expert's testimony was of sufficient necessity to require the larger fee. Reviewing the factors set forth in *Frazier v. Drake*, 357 P.3d 365, 377 (Nev. Ct. App. 2015), as discussed in

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both the Memorandum of Costs and Opposition to the Motion to Retax, the Court finds that the expert testimony was very important to the Defendants' preparation of their defense, particularly in light of the Plaintiff's damages expert's opinion that damages were as high as $150 million, as well as Plaintiff's retention of a former Chief Judge of the Delaware Chancery Court as a corporate governance expert. While the matter here ultimately resolved without a trial, Defendants had to prepare their experts for a trial that had been scheduled to commence in January, and also were engaged in preparation in anticipation of the rescheduled trial. Had the matter gone to trial, and Plaintiff presented the testimony of his designated experts, the experts' testimony would most likely have been highly significant to the outcome of the case.

Defendants experts were each well known in their fields, with academic and professional accomplishments. The hourly fees charged were reasonabl comparable to similar experts, including those retained by Plaintiff, and in line with the fees ordinarily charged by experts in the respective fields.

Based on the above analysis, the Court determines that the fees incurred by Mr. Strombom and for Mr. Foster are compensable in their entirety, and the fees incurred for Mr. Klausner and Mr. Roll are compensable in reduced amounts. The compensable amounts are:

Mr. Klausner - $250,000

Mr. Roll - $250,000

Mr. Strombom - $152,000

Mr. Foster - $201,000

6. As to category 12, which stated costs incurred for e-discovery, the Court finds that the consulting fees that were included in the invoices would be more appropriate as a request for attorneys' fees or should not have been included as expert expenses, and justifies reducing the compensable amount to $450,000, which amount is reasonable considering the circumstances of this case.

7. The Motion to Retax is granted as to the expenses set forth in Categories 13-17.

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CONCLUSIONS OF LAW

1. In category 1, for filing fees, Reading and the director defendants other than Gould (hereafter collectively "Reading") are entitled to reimbursement of their costs in the amount of $9,160.24.

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ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion to Retax and Settle Costs is Granted in Part and Denied in Part.

2. The Clerk shall enter final judgment in favor of Defendant Reading and against Plaintiff James J. Cotter, Jr. for costs in the amount of **$1,554,319.73**.

DATED this 5 day of November, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES** **Date of Hearing: October 22, 2018** **Time of Hearing: 9:00 a.m.**

11-14-18P02:24 RCVD

THIS MATTER CAME BEFORE THE COURT on the Motion for Attorneys' Fees filed by nominal defendant Reading International, Inc. ("RDI"). Defendants Ellen Cotter, Margaret Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") filed a Joinder to the Motion for Attorneys' Fees. Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. Marshall M. Searcy and Kevin M. Johnson appeared on behalf of Defendants. The Court, having considered the papers filed and arguments made in support of and in opposition to the Motion for Attorneys' Fees, and for good cause appearing, finds that this case does not meet the standards of NRS 18.010 to support an award of attorneys' fees. The fact that the Court ultimately granted summary judgment based upon ratification by the directors that the Court found to be independent does not make plaintiff's case a vexatious claim. Wherefore,

IT IS HEREBY ORDERED THAT the Motion for Attorneys' Fees and the Joinder are DENIED.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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Attorneys for Plaintiff
James J. Cotter, Jr.

APPROVED AS TO FORM AND CONTENT:

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Attorneys for Plaintiff
James J. Cotter, Jr.

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR**)) **Date of Hearing: October 22, 2018**) **Time of Hearing: 9:00 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Judgment in its Favor filed by Reading International, Inc. ("RDI"). Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. The Court, having considered the arguments made in the papers filed in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED that RDI's Motion for Judgment in its Favor is DENIED because RDI is a nominal party.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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James J. Cotter, Jr.

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APPROVED AS TO FORM AND CONTENT:

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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak

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APPROVED AS TO FORM AND CONTENT:

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Attorneys for Plaintiff
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) NOTICE OF ENTRY OF ORDER) DENYING READING) INTERNATIONAL, INC.'S) MOTION FOR ATTORNEYS' FEES))))))

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PLEASE TAKE NOTICE that an Order Denying RDI's Motion for Attorneys' Fees was entered in this action on the 16th day of November, 2018

A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF ENTRY OF ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Nominal Defendant Reading International, Inc.

DATED this 20th day of November, 2018.

By: /s/ Patricia A. Quinn

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JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR ATTORNEYS' FEES** **Date of Hearing: October 22, 2018** **Time of Hearing: 9:00 a.m.**

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Case Number: A-15-719860-B

THIS MATTER CAME BEFORE THE COURT on the Motion for Attorneys' Fees filed by nominal defendant Reading International, Inc. ("RDI"). Defendants Ellen Cotter, Margaret Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") filed a Joinder to the Motion for Attorneys' Fees. Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. Marshall M. Searcy and Kevin M. Johnson appeared on behalf of Defendants. The Court, having considered the papers filed and arguments made in support of and in opposition to the Motion for Attorneys' Fees, and for good cause appearing, finds that this case does not meet the standards of NRS 18.010 to support an award of attorneys' fees. The fact that the Court ultimately granted summary judgment based upon ratification by the directors that the Court found to be independent does not make plaintiff's case a vexatious claim. Wherefore,

IT IS HEREBY ORDERED THAT the Motion for Attorneys' Fees and the Joinder are DENIED.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No. A-15-719860-B Dept. No. XI Coordinated with: Case No. P-14-0824-42-E Dept. No. XI Jointly Administered **NOTICE OF ENTRY OF ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR**

PLEASE TAKE NOTICE that an Order Denying RDI's Motion for Judgment in its Favor was entered in this action on the 16th day of November, 2018

A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF ENTRY OF ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DATED this 20th day of November, 2018.

By: /s/ Patricia A. Quinn

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DISTRICT COURT
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JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **ORDER DENYING READING INTERNATIONAL, INC.'S MOTION FOR JUDGMENT IN ITS FAVOR**)) **Date of Hearing: October 22, 2018**) **Time of Hearing: 9:00 a.m.**

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THIS MATTER CAME BEFORE THE COURT on the Motion for Judgment in its Favor filed by Reading International, Inc. ("RDI"). Akke Levin and Steve Morris appeared on behalf of Plaintiff. Mark Ferrario appeared on behalf of RDI. The Court, having considered the arguments made in the papers filed in support of and in opposition to the Motion, and for good cause appearing,

IT IS HEREBY ORDERED that RDI's Motion for Judgment in its Favor is DENIED because RDI is a nominal party.

DATED this 15 day of November, 2018.

THE HONORABLE ELIZABETH GONZALEZ,
DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT FOR COSTS, FOR LIMITED STAY OF EXECUTION**)) **AND**)) **APPLICATION FOR ORDER SHORTENING TIME**)) Hearing Date: 12/3/18) Hearing Time: 9:00 a.m.

Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court under EDCR 2.24(b) and NRCP 59(e) for reconsideration and amendment of the Court's November 6 Order awarding RDI $1,554,319.73 in costs. Plaintiff further moves the Court for a limited stay of execution of the November 6 Judgment for Costs under NRCP 62(b). Plaintiff moves the Court under EDCR 2.26 for an Order shortening time to notice and hear this Motion.

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DECLARATION OF AKKE LEVIN IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

I, Akke Levin, declare:

1. I am an attorney with Morris Law Group, counsel for Plaintiff James J. Cotter, Jr. I have personal knowledge of the facts stated in this declaration except as to those stated on information and belief, which facts I have investigated and believe to be true. I would be competent to testify to them if called upon to do so.

2. On November 6, the Court entered an order on Plaintiff's Motion to Retax Costs, which awards RDI $1,554,319.73 in costs incurred by it and other defendants ("Judgment for Costs").

3. On November 16, the Court entered an order denying RDI's Motion for Judgment in its Favor. Notice of entry of this order was served on November 20, 2018.

4. This Motion is not filed for the purpose of delay but seeks to address a narrow legal issue that the Court's recently-entered Order denying RDI's Motion for Judgment in its Favor brought to the foreground.

5. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion for Reconsideration. The deadline to file an appeal from the November 6 Judgment for Costs is rapidly approaching and the issues raised in this Motion have an impact on the scope of the appeal as well on the possible success of the mediation scheduled in one of the appeals on December 18, 2018. Further, Cotter Jr. seeks a limited stay from execution of the Judgment for Costs, which would otherwise lapse on November 26.

6. I spoke with Mr. Ferrario on November 20 and with Ms. Cowden on November 21, 2018 about stipulating to a limited stay of execution of the Judgment for Costs. Ms. Cowden today advised that her

client would not seek to enforce the Judgment if Cotter Jr. posted a bond. As an alternative, Ms. Cowden said her client would agree to a seven-day stay. I advised Ms. Cowden that Mr. Cotter was presently travelling but that I would relate the offer to him.

7. This Motion is being served by the court's E-Service System to all counsel of record.

8. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Akke Levin, Bar No. 9102

ORDER SHORTENING TIME

On application of Akke Levin, counsel for plaintiff James J. Cotter, Jr., and good cause appearing,

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration shall be, and it hereby is, shortened and shall be heard on shortened time on the 3 day of Dec, 2018, at the hour of 9:00 a.m.

Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11

DATED: 11/21/18

I. INTRODUCTION

On November 6, 2018, the Court awarded $1,554,319.73 Million in costs to the individual defendants other than Gould and nominal defendant Reading International, Inc. ("RDI"). *See* Judgment for Costs, on file, at 5. As part of the Judgment for Costs, the Court awarded RDI a total

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of $581,718.69 for ten categories of costs, including, but not limited to, legal research costs, E-discovery costs, deposition transcripts, and filing fees. *See id.* at 4.

On November 16, 2018, the Court entered its order denying RDI's Motion for Judgment in its Favor, holding that RDI was a nominal defendant. *See* Nov. 16 Order, on file, at 2. Given the Court's order that RDI is a nominal defendant and not entitled to judgment in its favor, RDI was not—nor could it be—a prevailing party entitled to costs under NRS 18.020. The Court should grant reconsideration to correct this manifest legal error, amend the Judgment for Costs under NRCP 59(e) by omitting the $581,718.69 in costs awarded to RDI, and enter an amended judgment in the amount of $972,601.04.[1]

II. ARGUMENT

A. Amendment of the Judgment for Costs is warranted to correct a manifest error of law.

One of the "basic grounds" for a Rule 59(e) motion is to correct a "manifest error of law . . . ." *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (internal quotation marks and citation omitted). The Court also has authority under EDCR 2.24(a) to reconsider prior rulings even if "the same matters therein embraced" were set out in the initial motion. EDCR 2.24(a); *see also* EDCR 2.24(b) (setting out procedural requirements only). As discussed below, the Court should amend the Judgment for Costs, because it was a manifest error of law to award RDI, a nominal defendant that did not obtain a judgment in its favor, costs under NRS 18.020.

---

[1] Cotter Jr. is not abandoning his other arguments but will raise those on appeal.

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B. RDI was denied judgment in its favor and is therefore not a prevailing party entitled to costs.

To be entitled to costs under NRS 18.020, RDI had to be the "prevailing party" and not a mere nominal defendant. Only a "party in whose favor judgment is rendered" may file a memorandum of costs. NRS 18.110(1). No claims were brought against RDI and the damages sought by Cotter Jr. were sought on RDI's behalf; not against it. RDI also was not aligned with the prevailing directors, even though RDI *acted* like it by taking an active role in the litigation and joining in the prevailing directors' dispositive motions.

The Court agreed: it expressly denied RDI a judgment in its favor, holding that RDI was a mere nominal defendant. Nov. 16 Order, on file, at 2. As a matter of law, therefore, RDI cannot be a "prevailing party" entitled to costs. NRS 18.110; NRS 18.020.

Because there is no legal authority for the Court to award RDI *any* costs under NRS 18.020, it was error to award RDI costs in categories 1 (filing fees $3,770.24); category 2 (deposition reporters fees $48,227.60); category 5 (official reporters fees $3,874.89); category 6 (photocopies $1,380.72); Category 7 (telephone calls $225.52); category 8 (postage $498.98); category 9 (deposition travel costs $23,942.59); category 10 (computerized legal research $47,324.41); category 11 (courier expenses $2,473.74); and category 12 (E-discovery $450,000). The Court should therefore amend the Judgment to omit the total of costs awarded RDI—*i.e.*, $581,718.69—from the total $1,554,319.73 awarded and enter an amended judgment in the amount of $972,601.04.

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C. The Court should grant Cotter Jr. a limited stay of execution of the Judgment for Costs pending decision of this Motion or the filing of the appeal.

Under Rule 62(b), the Court may, "on such conditions for the security of the adverse party as are proper . . . stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion . . . to. . . amend a judgment made pursuant to Rule 59 . . . ." NRCP 62(b). Cotter Jr. requests the Court for a limited stay of execution pending the decision of this Motion or until Cotter Jr. files the appeal from the Judgment for Costs, because the outcome of this Motion may impact the amount of the supersedeas bond he will post at that time. Cotter Jr.'s counsel attempted to reach stipulation with counsel for RDI to stay execution but was unable to do so in time to obviate submitting this motion. *See* Levin Decl. ¶ 6. Cotter Jr. is not seeking to delay this matter, as evidenced by this Motion, which is filed on an expedited basis.

III. CONCLUSION

For the reasons stated above, the Court should reconsider its Judgment for Costs and enter an amended Judgment for Costs in the amount of $972,601.04. The Court should further grant Cotter Jr. a limited stay of execution pending the decision of this Motion or until Cotter Jr. files the appeal.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT FOR COSTS, FOR LIMITED STAY OF EXECUTION, AND APPLICATION FOR ORDER SHORTENING TIME** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 26th day of Nov., 2018.

By: _____

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiffs, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, Defendants. READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No.: XI Related and Coordinated Cases **BUSINESS COURT** **READING'S OPPOSITION/RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND RESPONSE TO MOTION FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME** **HEARING DATE & TIME:** **Monday, 12/3/18, 9:00 a.m.**

Reading International, Inc. ("Reading") submits the following Opposition to Plaintiff's Motion for Reconsideration, and also responds to the request for a Limited Stay of Execution.

OPPOSITION TO MOTION FOR RECONSIDERATION

Plaintiff's Motion for Reconsideration is basely solely on an argument that it raised in in its Motion to Retax, and that this Court obviously rejected, i.e., that only a party that has had judgment

Case Number: A-15-719860-B

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entered in its favor may receive an award of costs. However, as explained in Reading's Opposition to the Motion to Retax, NRS 18.020 provides to the contrary. That statute provides:

> Costs must be allowed of course ***to the prevailing party against any adverse party against whom judgment is rendered***, in the following cases:
>
> * * *
>
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.
>
> * * *

NRS 18.020 (emphasis added). Costs could be awarded in this matter because Plaintiff pleaded that he sought damages in excess of $10,000. Additionally, pursuant to NRS 18.050, "[e]xcept as limited by this section, in other actions in the district court, part or all of the prevailing party's costs may be allowed and may be apportioned between the parties, or on the same or adverse sides."

Plaintiff repeats his erroneous description of NRS 18.110, which he states limits the application for costs to an individual in whose favor judgment has been entered. However, as noted previously, the statute does not limit who *may* file a motion to retax; it states who *must* file one.

Furthermore, any doubt that Plaintiff's theory is wrong is established by *Copper Sands Homeowners v. Flamingo 94 Ltd.*, 130 Nev. Adv. Op. 81, 335 P.3d 203, 204 (2014). In that construction defect case, the court entered judgment against the Plaintiff HOA, dismissing its claims against the developer, and thereby essentially mooting the third party claims the developer had brought against the subcontractors, as such claims had been contingent on the HOA's Plaintiff's claims. Even though the HOA had not brought claims against the subcontractors, the Court found that the subcontractors were adverse to the HOA, because the subcontractors' liability was contingent on the success of the HOA's claims against the developer.

While Plaintiff has previously claimed that he was "functionally" aligned with RDI, such a claim is simply false. RDI properly defended against Plaintiffs' claims, because RDI's interests were at stake. *See Blish V. Thompson Auto. Arms Corp*, 30 Del. Ch. 538, 542 (Del. 1948) (corporation may defend derivative action, "if corporate interests are threatened by the suit. . . ."); *National Bankers v. Adler*, 324 S.W.2d 35, 37 (Tex. Civ. App. 1959) (corporation may defend against derivative action that threatens rather than advances the corporate interests); *Swenson v. Thibaut*, 39 N.C. App. 77, 100

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(N.C. Ct. App. 1978) (corporation may defend against claims that seek to enjoin corporation action or interfere with internal corporate governance). Had Plaintiff been successful in obtaining what he sought in his prayer for relief, 1) RDI would have been required to reinstate Plaintiff to his position of CEO, and thus, remove its own CEO and President; 2) Reading's board would have been enjoined from taking actions using committees to effect board business, thus encroaching on Reading's corporate rights under both Nevada law and Reading's Bylaws; 3) Reading would have had to make corrective disclosures; 4) Reading would have been required to imposed specific qualifications for members of its Board of Directors; and 5) limitations would have been placed on the voting rights of certain Reading stock. ***See* SAC, Prayer for Relief, a-e.** All of that requested injunctive relief would have been imposed on *Reading*, as such requirements would have survived the term of any specific board members. Accordingly, *functionally*, Reading was adverse to Plaintiff, regardless of the *form* of its party status.

Finally, Plaintiff cites no authority that holds that a "nominal defendant" may not be awarded costs. A nominal defendant is still a party and as such is entitled under the circumstances here to recover costs as previously awarded.

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RESPONSE TO MOTION FOR LIMITED STAY

As Ms. Levin indicated in her declaration, Reading has no objection to a stay, with the posting of a suitable bond.[1] Since Plaintiff has indicated in the Motion that an appeal will likely be taken, rather than requiring an additional motion for stay, Reading suggests that such stay be deemed effective through the expiration of the deadline for filing the notice of appeal, or, if an appeal is filed, through the resolution of said appeal.

Ms. Levin's reference to an "alternative" suggestion, involving a stay for seven days indicates this offer was misunderstood. In order to avoid the need for a motion to stay, Reading was willing to

[1] Ms. Levin's reference to an alternative suggestion, involving a stay for seven days indicates this offer was misunderstood. In order to avoid the need for a motion to stay, Reading was willing to agree that the *posting of a bond* could be delayed by seven days. This was offered in response to the concern that Plaintiff could not quickly arrange for a bond. At this point, however, Plaintiff has had ample time to prepare for posting a bond, and accordingly, the requested stay should be effective only upon the posting of a bond sufficient to secure the full value of the judgment and interest. See NRCP 62(d).

agree that the *posting of a bond* could be delayed by seven days. This was offered in response to the concern that Plaintiff could not quickly arrange for a bond. At this point, however, Plaintiff has had ample time to prepare for posting a bond, and accordingly, the requested stay should be effective only upon the posting of a bond sufficient to secure the full value of the judgment and interest. See NRCP 62(d).

The bond amount should, of course, consider the likely time to resolve the appeal. Reading requests that the bond amount be for the full amount of the judgment, $1,554, 319.73, plus two years interest at the statutory rate, which is currently 7 percent. Rounding to the nearest thousand, this would result in a bond in the amount of $1,772,000.

Accordingly, Reading agrees that a stay may issue, upon the filing of a bond in the amount of $1,772,000.

CONCLUSION

Plaintiff has failed to show that there is any basis for this Court to reconsider the judgment for costs granted to Reading. Accordingly, Plaintiff's Motion to Reconsider should be denied.

And, as set forth above, Reading agrees that a stay may issue, upon the filing of a bond in the amount of $1,772,000.

DATED this 30th day of November, 2018

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/s/ Mark E. Ferrario
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the ***Reading's Opposition/Response to Plaintiff's Motion for Reconsideration and Response to Motion for Limited Stay of Execution on Order Shortening Time*** to be filed and served via the Court's Odyssey E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 30th day of November 2018

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive,

Defendants,

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

Case No.: A-15-719860-B
Dept. No.: XI

Case No.: P-14-082942-E
Dept. No.: XI

BUSINESS COURT

DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, JUDY CODDING, AND MICHAEL WROTNIAK'S JOINDER TO READING'S OPPOSITION/RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND RESPONSE TO MOTION FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME

Dismissed Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak, by and through their counsel, hereby submit this Joinder to Defendant Reading's Opposition/Response to Plaintiff's Motion for Reconsideration and Response to Motion for Limited Stay of Execution on Order Shortening Time filed on November 30th, 2018. The Dismissed Defendants join in this Response/Opposition in its entirety and specifically join in Readings' request that Plaintiff post an appropriate bond if a stay is entered for the reasons contained in Reading's Response/Opposition.

Further, because the Court has already decided that costs awarded to Reading were properly incurred and thus compensable by plaintiff, then to the extent the Court decides to amend its ruling awarding the costs to RDI as a prevailing party, the appropriately incurred costs should still be awarded to the individual directors as prevailing parties in the litigation.

DATED this 30th day of November 2018.

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Attorneys for Defendants Margaret Cotter, Ellen Cotter, and Guy Adams

CERTIFICATE OF SERVICE

I hereby certify that, on November 30th, 2018, I caused a true and correct copy of the foregoing **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, JUDY CODDING, AND MICHAEL WROTNIAK'S JOINDER TO READING'S OPPOSITION/RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION AND RESPONSE TO MOTION FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *Sarah Gondek* .
An employee of Cohen|Johnson|Parker|Edwards

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc. Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT FOR COSTS AND FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME** **Date of Hearing: December 3, 2018** **Time of Hearing: 9:00 a.m.**

This Matter came before the Court on December 3, 2018 on Plaintiff's *Motion for Reconsideration and Amendment of Judgment for Costs and For Limited Stay of Execution on Order Shortening Time ("Motion for Reconsideration").* Plaintiff James J. Cotter, Jr. appeared by and through his counsel, Akke Levin, Esq. Reading International, Inc. ("Reading") appeared by and

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Case Number: A-15-719860-B

through its counsel Kara B. Hendricks, Esq. The Individual Defendants appeared by and through their counsel, Marshall M. Searcy, Esq. and Kevin M. Johnson, Esq.

The Court, having considered the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, finds that Plaintiff has failed to show sufficient cause to warrant reconsideration or amendment of the Judgment on Costs entered in favor of Reading and the Individual Defendants, and further finds that a stay of enforcement of such Judgment shall be entered, and that Plaintiff shall have seven calendar days from the date of the December 3, 2018 hearing in which to procure a bond equal to the amount of the judgment plus one year of interest at the statutory rate.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion for Reconsideration is DENIED.
2. Plaintiff's request for a limited stay of execution on the Judgment for Costs is GRANTED.
3. Plaintiff shall have until and including Monday December 10, 2018 to post a supersedeas bond in the amount of **$1,663, 122.11** and provide notice that a bond has been posted.
4. Upon posting of the bond, enforcement of the Judgment for Costs in favor of Reading and the Individual Defendants shall be stayed pending the resolution of the appeal.

DATED this 6 day of December, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

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APPROVED AS TO FORM AND CONTENT:

Dated this 4th day of December 2018.

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Attorneys for Plaintiff, James J. Cotter, Jr.

Dated this ____ day of December 2018.

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Attorneys for Plaintiff, James J. Cotter, Jr.

Dated this 4th day of December 2018.

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	) Case No. A-15-719860-B) Dept. No. XI)) Coordinated with:)) Case No. P-14-0824-42-E) Dept. No. XI)) Jointly Administered)) **NOTICE OF APPEAL**

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Please take notice that Plaintiff James J. Cotter, Jr. hereby appeals to the Supreme Court of Nevada and/or the Appeals Court of the State of Nevada from:

1. The District Court's November 6, 2018 order (1) granting in part and denying in part motion to retax and settle costs and (2) entering judgment for costs ("Judgment for Costs").

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF APPEAL,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Nominal Defendant Reading International, Inc.

DATED this 6th day of December, 2018.

By: /s/ Patricia A. Quinn
An employee of Morris Law Group

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Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

Case No. A-15-719860-B
Dept. No. XI

NOTICE OF ENTRY OF ORDER

TO: All parties and their counsel of record:

YOU AND EACH OF YOU will please take notice that the *Order Denying in Part and Granting in Part Plaintiff's Motion for Reconsideration and Amendment of Judgment for Costs and for Limited Stat of Execution on Order Shortening Time* was entered on December 6, 2018. A

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copy of said order is attached hereto.

DATED: this 7th day of December, 2018.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Notice of Entry of Order*** be filed and served via the Court's Odyssey E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED: this 7th day of December, 2018

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

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CLERK OF THE COURT

ORD
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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc. Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants.	Case No. A-15-719860-B Dept. No. XI **ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION FOR RECONSIDERATION AND AMENDMENT OF JUDGMENT FOR COSTS AND FOR LIMITED STAY OF EXECUTION ON ORDER SHORTENING TIME** **Date of Hearing: December 3, 2018** **Time of Hearing: 9:00 a.m.**

This Matter came before the Court on December 3, 2018 on Plaintiff's *Motion for Reconsideration and Amendment of Judgment for Costs and For Limited Stay of Execution on Order Shortening Time ("Motion for Reconsideration").* Plaintiff James J. Cotter, Jr. appeared by and through his counsel, Akke Levin, Esq. Reading International, Inc. ("Reading") appeared by and

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Case Number: A-15-719860-B

through its counsel Kara B. Hendricks, Esq. The Individual Defendants appeared by and through their counsel, Marshall M. Searcy, Esq. and Kevin M. Johnson, Esq.

The Court, having considered the Motion and attendant briefing; and having heard the arguments of counsel, for good cause, finds that Plaintiff has failed to show sufficient cause to warrant reconsideration or amendment of the Judgment on Costs entered in favor of Reading and the Individual Defendants, and further finds that a stay of enforcement of such Judgment shall be entered, and that Plaintiff shall have seven calendar days from the date of the December 3, 2018 hearing in which to procure a bond equal to the amount of the judgment plus one year of interest at the statutory rate.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiffs' Motion for Reconsideration is DENIED.
2. Plaintiff's request for a limited stay of execution on the Judgment for Costs is GRANTED.
3. Plaintiff shall have until and including Monday December 10, 2018 to post a supersedeas bond in the amount of **$1,663, 122.11** and provide notice that a bond has been posted.
4. Upon posting of the bond, enforcement of the Judgment for Costs in favor of Reading and the Individual Defendants shall be stayed pending the resolution of the appeal.

DATED this 6 day of December, 2018

Hon. Elizabeth Gonzales, District Court Judge

Respectfully submitted:

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APPROVED AS TO FORM AND CONTENT:

Dated this 4th day of December 2018.

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Attorneys for Plaintiff, James J. Cotter, Jr.

Dated this ____ day of December 2018.

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Dated this 4th day of December 2018.

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., DERIVATIVELY ON BEHALF OF READING INTERNATIONAL, INC., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, AND MICHAEL WROTNIAK, READING INTERNATIONAL, INC., A NEVADA CORPORATION, Defendants, And READING INTERNATIONAL, INC., A NEVADA CORPORATION, Nominal Defendant	CASE NO.: A-15-719860-B DEPT. NO.: XI **NOTICE OF POSTING OF APPEAL COST BOND**

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To: ALL PARTIES AND THEIR COUNSEL:

Please take notice that concurrently with the filing of the Notice of Appeal herein, Plaintiffs are posting Five Hundred Dollars ($500.00) pursuant to NRAP 7.

Dated this 14th day of December, 2018.

GREENBERG TRAURIG, LLP

BY: */s/ Mark E. Ferrario*
MARK E. FERRARIO, ESQ. (NV BAR NO. 1625)
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused the foregoing ***Notice of Posting of Appeal Cost Bond*** to be e-served via the Court's Odyssey E-Filing system on the parties registered to this matter. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 14th day of December 2018.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP

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